TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 22

THE KNOXVILLE IRON COMPANY, PLAINTIFF IN ERROR,

vs.

SAMUEL HARBISON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED DECEMBER 26, 1899.

(17,593.)

(17,593.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 174.

THE KNOXVILLE IRON COMPANY, PLAINTIFF IN ERROR,

vs.

SAMUEL HARBISON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 25, 1900.

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a Chancery cause, 3rd circuit, Knox county.

Taxed 1899.

Transcript.

Chancery Court for Knox County.

Solicitors: Green & Shields; Lucky, Sanford & Fowler.
Parties: Sam. Harbison *vs.* Knoxville Iron Company. 7510
Lucky, Sanford & Fowler, sec.

Filed September 9, 1899.

J. G. STUART,
Deputy Clerk.

HARBISON
vs.
KNOXVILLE IRON COMPANY.

1 Transcript of the record in the case of Sam. Harbison *vs.* Knoxville Iron Company, in the chancery court at Knoxville, being cause No. 7510 on the rule docket of said court.

Prosecution Bond.

Filed June 2, 1899. J. F. Chumbley, C. & M.

STATE OF TENNESSEE:

Chancery Court at Knoxville.

Know all men by these presents that we, Sam. Harbison & Green & Shields, secty., are held and firmly bound unto Knoxville Iron Company in the penal sum of two hundred and fifty dollars, to be void on condition that said principal obligor shall prosecute with effect a suit which he is about to commence in said court against said obligee, or pay all costs and damages incident on failure thereof or which may be adjudged against them.

June 2nd, 1899.

SAM. HARBISON, [SEAL.]
By GREEN & SHIELDS.
GREEN & SHIELDS, *Sectys.* [SEAL.]

Original Bill.

Filed June 2nd, 1899. J. F. Chumbley, C. & M., by Lewis Tillman, D. C. & M.

The bill of complaint of Sam. Harbison, a citizen of Knoxville, Tennessee, filed against The Knoxville Iron Company, a corporation organized under the laws of the State of Tennessee, with its office in Knox county, Tennessee.

To the honorable chancellor holding the chancery court at Knoxville, Tennessee:

Humbly complaining, your orator shows unto your honor that the Knoxville Iron Company is a corporation organized
2 under the laws of the State of Tennessee, with its office at Knoxville, Tennessee. Said company is engaged in the manufacture of iron and in mining and selling coal. It employs a large number of laborers both in its manufacture of iron and at its coal mines in Anderson county, Tennessee.

Your orator further shows unto your honor that on Saturday of each week, and perhaps on other days, the Knoxville Iron Co. attempts to pay off a part of the wages due from it to its laborers by accepted printed orders in the following words:

"To Knoxville Iron Company:

Let bearer have — bushels of coal and charge to my account."

The laborers are required to sign this order, and it is accepted by a stamp in these words:

"Accepted —— —, 1899.

KNOXVILLE IRON COMPANY,
Per —— ——."

The defendant pretends that it will pay its said laborers in cash for their wages at the end of each month, but will not pay cash at any other time. In the interim, however, it will and does issue to them weekly its accepted orders, as aforesaid, well knowing that its laborers have no basis of credit, and are bound to receive these orders and sell them to obtain the necessities of life. The defendant mines its coal very cheaply, and by this forced sale of the same through its laborers makes a good profit on it, which the laborers are compelled to bear. If the laborers accept these orders the defendant will not redeem them in cash at the end of the month, but requires the laborer or "bearer" to take coal in payment of the orders, in open violation of the statutes of Tennessee.

Your orator further shows unto your honor that he has bought for value and in due course of trade and is now the *bona fide* holder and owner of the following accepted orders issued by the defendant to the following-named parties for the respective amounts of coal set opposite their names, to wit:

	Name.	Bushels.
	J. M. K.	41⅔
	J. M. K.	41⅔
	W. Cruze, his x mark	41⅔
	Chas. Farrigan	41⅔
	I. Worthington	41⅔
	F. Smithzel	41⅔
	F. Smithzel	41⅔
	J. Hodges	41⅔
	J. Hodges	41⅔
	J. Hodges	41⅔
	J. Hodges	41⅔
	J. Hodges	41⅔
	J. E. Wilson	41⅔
	R. Bussell	41⅔
	Ed. McCroskey	41⅔
	W. Huffaker, his x mark	41⅔
	J. M. K.	41⅔
	J. M. K.	41⅔
	C. Corelli	16⅔
	John Hodge, his x mark	16⅔
	R. Bird, his x mark	16⅔
	W. Cunningham	16⅔
	L. Mitchell, his x mark	16⅔
	L. Mitchell, his x mark	16⅔
	Isaac Worthington	16⅔
	C. B. Harte	16⅔
	C. B. Harte	16⅔
	S. Caldwell, his x mark	16⅔
	H. Angel	16⅔
	W. T. Cheslee	16⅔
	M. Whiteside, his x mark	16⅔
	W. Tilson, his x mark	16⅔
	Sam. Pride	16⅔
	M. A. Harp	16⅔
4	J. S. Matlock, his x mark	16⅔
	J. S. Matlock, his x mark	16⅔
	J. S. Matlock, his x mark	16⅔
	G. White	16⅔
	C. B. Harte	16⅔
	Sam. Pride	16⅔
	J. F. Malcom	16⅔
	J. F. Malcom	16⅔
	R. McDaniel	16⅔
	J. H. Harrison, his x mark	16⅔
	S. Henley	16⅔
	W. Wells, his x mark	16⅔
	W. A. Smith, his x mark	16⅔
	W. Firman, his x mark	16⅔
	I. M. Moore	16⅔
	Robert Rogers	16⅔

Name.	No. bushels.
Wm. Gibbs	16
H. L. Baker	16
H. L. Baker	16
J. S. Matlock, his x mark	16
R. Bussell	16
S. Tilson	16
J. M. K	16
R. Whittock	16
Joe Johnson	16
Joe Johnson	16
J. F. Malcom	16
J. F. Malcom	16
T. Hutchins, his x mark	16
George Purdue	16
W. T. Cheslee	16
W. T. Cheslee	16
A. Madgett, his x mark	16
5 W. Mornfield, his x mark	16
A. Bryant, his x mark	16
J. Emery, his x mark	16
C. B. Harte	16
J. H. Partain	16
J. W. Warren	16
E. Moffett, his x mark	16
E. Moffett, his x mark	16
P. Galanard	16
Henry Nelson	16
Henry Nelson	16
W. Bird	16
Dick Nelson, his x mark	16
Dick Nelson, his x mark	16
E. L. Turner	16
W. A. Sharp	16
W. A. Sharp	16
T. Hutchins, his x mark	16
Sam. Milwee	16
Albert Carter	16
W. Sninnery, his x mark	16
Wm. Porter	16
Wm. Porter	16
F. Kincaid, his x mark	16
F. Kincaid, his x mark	16
Hugh Baker	16
W. Glover, his x mark	16
B. Morefield, his x mark	16
L. Morefield, his x mark	16
L. Morefield, his x mark	16
L. Morefield, his x mark	16
F. M. Godlin	16
F. M. Godlin	16

	Name.	No. bushels.
	Joe Johnson	16
6	T. Hutchins, his x mark	16
	E. S. Roberts, his x mark	16
	E. S. Roberts, his x mark	16
	E. Wilkins, his x mark	16
	S. Ryan	16
	J. W. Warren	16
	W. Huffaker, his x mark	16
	B. McDaniel	16
	J. Callenburger, his x mark	16
	Hens Jones, his x mark	16
	Wm. Porter	16
	C. B. Harle	16
	W. Huffaker, his x mark	16
	Andy Moffett, his x mark	16
	T. A. Elmore	16
	J. Burkes, his x mark	16
	Will. Carter, his x mark	16
	J. Burkes, his x mark	16
	R. Prater, his x mark	16
	Hens Jones, his x mark	16
	C. A. Raulston	16
	W. Jackson, his x mark	16
	W. Jackson, his x mark	16
	C. Green, his x mark	16
	C. Grem, his x mark	16
	J. Murrell, his x mark	16
	J. Murrell, his x mark	16
	D. Anderson, his x mark	16
	S. O'Neil, his x mark	16
	S. O'Neil, his x mark	16
	C. Gurlee	16
	W. Cunningham	25
	C. Balder	25
	W. A. Sharp	25
	Al. Moffett, his x mark	25
7	L. Mitchell, his x mark	25
	W. Glover, his x mark	25
	Hugh Baker	25
	T. Hutchins, his x mark	25
	F. Kincaid, his x mark	25
	W. Sherman, his x mark	25
	Albert Carter	25
	J. Emery, his x mark	25
	R. McDaniel	25
	A. Harden	25
	A. Mars	25
	I. Campbell	25
	T. R. Gun	25
	T. R. Gaden	25

Name.	No. bushels.
L. Young, his x mark	25
A. Bryant, his x mark	25
Wm. Ponten	25
C. E. Raulston	25
B. Logan, his x mark	25
J. M. K	25
D. Anderson, his x mark	25
John Hodge, his x mark	25
A. Holden	25
J. W. Morgan	25
I. Hall, his x mark	25
I. Hall, his x mark	25
C. B. More	25
Chas. Jarnagin	25
H. Angel	25
Jo. Callenberger	25
J. Wilson	25
W. T. Chesler	25
J. Warren	25
F. English, his x mark	25
D. Fipper	25
8 S. Cardwell, his x mark	16⅔
R. Blythe, his x mark	16⅔
J. Easley	16⅔
Sam. Pride	16⅔
Sam. Pride	16⅔
T. Lewis, his x mark	25
J. Bryson, his x mark	25
Walter McCarroll	25
C. Jarnagin, his x mark	25
R. H. Brown	25
W. Powell, his x mark	25
H. Crow, his x mark	25
T. Ball, his x mark	33⅓
J. Harmon, his x mark	33⅓
J. Harmon, his x mark	33⅓
Alex. Davis, his x mark	33⅓
J. Robinson, his x mark	33⅓
J. Falls, his x mark	33⅓
T. Balk, his x mark	41⅔
W. Morefiled, his x mark	41⅔
H. Crow, his x mark	41⅔
J. Anderson	50
J. Anderson	50
J. Anderson	50
J. Anderson	50
J. Anderson	50
J. Allen, his x mark	16⅔
Emit Woods	16⅔
J. R. Graham, his next mark	16⅔

	Name.	No. bushels.
	J. R. Graham, his x mark	16⅔
	Jas. Carter	16⅔
	Dick Nelson, his x mark	16⅔
	J. Wilson, his x mark	16⅔
	J. Murrell, his x mark	16⅔
9	L. P. F	16⅔
	Earnest Mason	16⅔
	Wm. Gibbs	16⅔
	Geo. Tipton	16⅔
	J. Holmes, his x mark	16⅔
	Lee Pierson, his x mark	16⅔
	I. Campbell	16⅔
	W. Cunningham	16⅔
	W. Mills, his x mark	16⅔
	C. E. Raulston	16⅔
	W. Thornton, his x mark	16⅔
	W. Thornton, his x mark	16⅔
	W. Carter, his x mark	16⅔
	R. Prater, his x mark	16⅔
	R. Prater, his x mark	16⅔
	C. Pucket	16⅔
	Jas. Wilson, his x mark	16⅔
	W. H. Huffaker, his x mark	16⅔
	W. Wells, his x mark	16⅔
	Jeff. White, his x mark	16⅔
	Dick Wilson, his x mark	16⅔
	Chas. Jarnagin	41⅔
	Chas. Jarnagin	41⅔
	T. Moore	41⅔
	E. S. Roberts, his x mark	41⅔
	W. Mourfield, his x mark	41⅔
	J. H. Partain	41⅔
	J. H. Partain	41⅔
	J. H. Partain	33⅓
	I. Campbell	33⅓
	C. Baker	33⅓
	C. Baker	33⅓
	Sam. Milwee, his x mark	33⅓
	R. Prater, his x mark	33⅓
10	C. Baker	33⅓
	H. Dove	33⅓
	H. Dove	33⅓
	F. Kincaid, his x mark	33⅓
	F. Moore	33⅓
	J. Murrell, his x mark	25
	J. M. Goodwin	25
	R. Nance	25
	E. L. Turner	25
	W. Walker, his x mark	25
	W. Finman, his x mark	25

Name.	No. bushels.
W. Huffaker, his x mark	25
R. Bussell, his x mark	25
R. Bussell, his x mark	25
Jesse Mourfield, his x mark	25
Jas. Wilson, his x mark	25
George Redmond	25
W. Wells, his x mark	25
W. Jackson, his x mark	25
J. Wilson, his x mark	25
F. Kincaid, his x mark	25
J. P. F.	25
Jeff. White, his x mark	25
Wm. Gibbs	25
Walter Grigsby	25
W. Cunningham	25
F. Smythzel	41⅔
G. A. Millis, his x mark	33⅓
J. Easley	33⅓
W. Cruze, his x mark	33⅓
J. Bryson, his x mark	33⅓
J. G. Gaddis	33⅓
E. L. Turner	33⅓
J. Callenburger, his x mark	33⅓
L. Mourfield, his x mark	25
11 Joe Johnson	25
Joe Johnson	25
Joe Johnson	25
E. L. Turner	25
J. W. Smith	25
R. H. Brown	25
W. Russell, his x mark	25
C. Hunter, his x mark	25
J. Bryson, his x mark	25
J. F. Malcom	25
H. Harden	25
M. A. Harp	25
T. Lewis, his x mark	25
B. Pierce, his x mark	25
B. Pierce, his x mark	25
R. Blythe, his x mark	25
C. Pierson, his x mark	25
I. Hall, his x mark	25
Jas. Williams, his x mark	25
H. Angel	25
H. Angel	25
Alex. Davis, his x mark	25
C. B. Harle	25
J. G. Gaddis	25
A. Bursey	25
W. Wesley, his x mark	25

	Name.	No. bushels.
	S. Caldwell, his x mark	25
	S. Caldwell, his x mark	25
	W. M. Smith, his x mark	25
	Wm. Porter	25
	E. Pierce, his x mark	25
	E. Pierce, his x mark	25
	Jos. Evary	25
	W. Smith, his x mark	25
12	W. Sherman, his x mark	25
	J. W. Warren	25
	W. T. Chesler	25
	Andy Moffett, his x mark	25
	Lee Warner	25
	W. A. Sharp	25
	T. R. Godner	25
	T. R. Godner	25
	J. Falls, his x mark	25
	S. Tilson	25
	J. N. Robbins, his x mark	25
	Hens Jones, his x mark	25
	S. Tilson	25
	J. Hodge, his x mark	25
	J. McGowan, his x mark	25
	Wm. Gibbs	16⅔
	William Cruze	16⅔
	A. Callenberger	16⅔
	H. Callenberger	16⅔
	Rob. Bonnette	16⅔
	J. Easley	16⅔
	J. Easley	16⅔
	C. Pierson, his x mark	16⅔
	Henry Newton	16⅔
	Henry Newton	16⅔
	Henry "	16⅔
	T. Galonarl	16⅔
	J. Bunkers, his x mark	16⅔
	L. Mitchell, his x mark	16⅔
	J. Robinson, his x mark	16⅔
	J. Robinson, his x mark	16⅔
	T. Lewis, his x mark	16⅔
	A. Sawyers	16⅔
	A. Sawyers	16⅔
	A. Harden	16⅔
	W. Powell, his x mark	16⅔
	J. Cross, his x mark	16⅔
13	C. Hunter, his x mark	16⅔
	J. W. Morgan	16⅔
	J. W. Morgan	16⅔
	B. Mourfield, his x mark	16⅔
	B. Mourfield, his x mark	16⅔

Name.	No. bushels.
J. W. Smith	16⅔
Jas. Williams, his x mark	16⅔
H. Angell	16⅔
Alex. Davis, his x mark	16⅔
Al. Madgett, his x mark	16⅔
Al. Madgett, his x mark	16⅔
W. Wesley, his x mark	16⅔
S. Caldwell, his x mark	16⅔
S. Caldwell, his x mark	16⅔
I. Hall, his x mark	16⅔
I. Hall, his x mark	16⅔
W. M. Smith, his x mark	16⅔
Wm. Porter	16⅔
Wm. Porter	16⅔
W. Sherman, his x mark	16⅔
Lee Warrin	16⅔
Lee Warrin	16⅔
J. Browder, his x mark	16⅔
Albert Carter	16⅔
Albert Carter	16⅔
D. Anderson, his x mark	16⅔
J. W. Warren	16⅔
J. W. Warren	16⅔
Joe Carter	16⅔
C. Gorden, his x mark	16⅔
S. Blair, his x mark	16⅔
W. T. Cheslee	16⅔
C. W. Grant	16⅔
Andy Moffett, his x mark	16⅔
14 Ben. Everett	16⅔
W. A. Sharp	16⅔
W. A. Sharp	16⅔
S. O. Neil, his x mark	16⅔
Hens Jones, his x mark	16⅔
J. Emery, his x mark	25
M. Whitesides, his x mark	25
A. Mack, his x mark	25
Walter McCarrell	25
J. S. Matlock, his x mark	25
S. McKinney, his x mark	25
S. McKinney, his x mark	25
S. McKinney	25
P. McDaniel	25
H. Zuber, his x mark	25
R. Harden, his x mark	25
S. Pryse	25
M. Whitesides, his x mark	25
L. Humphries, his x mark	25
J. Harrison, his x mark	25
J. Harrison, his x mark	25

	Name.	No. bushels.
	J. Harrison, his x mark	25
	I. Hutchins, his x mark	25
	George Powell	25
	L. Young, his x mark	25
	Ez. McCroskey	25
	Ed. McCroskey	33⅓
	J. M. K	41⅔
	J. M. K	41⅔
	J. M. K	41⅔
	J. M. K	41⅔
	J. Anderson	50
	J. Anderson	50
	J. Anderson	50
15	J. Anderson	50
	J. Anderson	50
	Alex. Davis, his x mark	16⅔
	Alex. Davis, his x mark	16⅔
	George Tipton	16⅔
	J. Harrison, his x mark	16⅔
	H. Mack, his x mark	16⅔
	J. Emery, his x mark	16⅔
	C. Emmerson, his x mark	16⅔
	L. Humphries, his x mark	16⅔
	I. Hutchins, his x mark	16⅔
	H. Angel	16⅔
	W. M. Bowman	16⅔
	C. P. Harle	16⅔
	I. W. Worthington	16⅔
	I. W. Worthington	16⅔
	S. Ryan	16⅔
	James W. Taylor	16⅔
	W. M. Bowman	16⅔
	R. McDaniel	16⅔
	T. Paris, his x mark	16⅔
	S. McKinney, his x mark	16⅔
	T. Paris, his x mark	16⅔
	Walter McCarroll	16⅔
	J. S. Matlock, his x mark	16⅔
	W. Moorefield, his x mark	41⅔
	J. W. Morgan	16⅔
	W. T. Cheslee	16⅔
	James Large, his x mark	16⅔
	W. Smith, his x mark	16⅔
	W. Smith, his x mark	16⅔
	S. Tilson	16⅔
	W. Tilson	16⅔
	W. Tilson, his x mark	16⅔
	J. McGowan, his x mark	16⅔
16	L. W. Lilleston	16⅔
	E. Wilkins, his x mark	16⅔

Name.	No. bushels.
W. Cruze	16⅔
W. Cruze	16⅔
R. Whittrell, his x mark	16⅔
T. Balk, his x mark	33⅓
I. Hall, his x mark	25
T. Back, his x mark	25
W. Carter, his x mark	25
I. M. Moore	25
B. Logan, his x mark	25
B. Logan	25
B. Logan, his x mark	25
C. Baker	33⅓
C. Baker	33⅓
J. McGowan, his x mark	33⅓
B. Logan, his x mark	33⅓
E. Moor	33⅓
C. Baker	33⅓
I. Campbell	33⅓
E. L. Turner	33⅓
E. L. Turner	33⅓
R. Bussell	33⅓
R. Prater, his x mark	33⅓
Joe Johnson	33⅓
Joe Johnson	33⅓
B. Moorefield, his x mark	33⅓
J. White, his x mark	33⅓
S. Tilson	33⅓
W. Cunningham	16⅔
W. Cunningham	16⅔
S. McKinney, his x mark	16⅔
Albert Carter	16⅔
W. Shinman, his x mark	16⅔
William Cruze	16⅔
17 W. Glover, his x mark	16⅔
W. A. Sharp	16⅔
W. A. Sharp	16⅔
J. H. Partain	16⅔
W. Wells, his x mark	16⅔
Walter McCarrell	16⅔
Walter McCarrell	16⅔
F. Moore	16⅔
T. Back, his x mark	16⅔
E. Pierce, his x mark	16⅔
W. Huffaker, his x mark	16⅔
B. Pierce, his x mark	16⅔
S. O. Neil, his x mark	16⅔
G. A. Mills, his x mark	16⅔
George White	16⅔
S. H. Shinpaugh	16⅔
R. Whittock	16⅔

Name.	No. bushels.
Andy Moffett, his x mark	16⅔
Andy Moffett, his x mark	16⅔
R. McDaniel	16⅔
R. McDaniel	16⅔
C. Hunter, his x mark	16⅔
C. Hunter, his x mark	16⅔
R. Nance	16⅔
R. Nance	16⅔
J. W. Morgan	16⅔
J. Harrison, his x mark	16⅔
J. Emery, his x mark	16⅔
Dick Nelson, his x mark	16⅔
Hens Jones, his x mark	16⅔
A. Watkins, his x mark	16⅔
" " "	16⅔
W. Bursey, his x mark	16⅔
F. Kincaid, his x mark	16⅔
J. W. Morgan	16⅔
18 F. Kincaid, his x mark	16⅔
J. Murrell, his x mark	16⅔
C. Emery, his x mark	16⅔
W. Cunningham	16⅔
Z. W. Smith	25
W. Huffaker, his x mark	25
J. Murrell, his x mark	25
F. Swetzell	25
F. Swetzell	25
F. Swetzell	25
J. Hodge, his x mark	25
S. McKinney, his x mark	25
Albert Carter	25
J. W. Warren	25
W. Wesley, his x mark	25
D. Anderson, his x mark	25
Joe Carter	25
C. B. Harle	25
Ben. Tolbert	25
W. Glover, his x mark	25
B. Logan, his x mark	25
J. McGowan, his x mark	25
C. E. Raulston	25
G. A. Millis, his x mark	25
J. Emery, his x mark	25
Hens Jones, his x mark	25
S. Caldwell, his x mark	25
J. Wilson, his x mark	25
J. Wilson, his x mark	25
W. Bursey, his x mark	25
F. Kincaid, his x mark	25
J. M. K	25

	Name.	No. bushels.
	A. Sawyers	25
19	W. A. Sharpe	25
	J. L. Gaddis	25
	T. Lewis, his x mark	25
	W. Wells, his x mark	25
	J. McGowan, his x mark	33⅓
	J. L. Gaddis	33⅓
	S. Caldwell, his x mark	33⅓
	S. Brummet, his x mark	41⅔
	J. Anderson	41⅔
	J. Anderson	41⅔
	J. Anderson	41⅔
	B. R. Hodges	41⅔
	B. R. Hodges	50
	T. C. Elliott	50
	R. Harrison, his x mark	33⅓
	H. Harden	33⅓
	W. Cruze, his x mark	33⅓
	S. Caldwell, his x mark	33⅓
	S. Caldwell, his x mark	33⅓
	Robert Rogers	16⅔
	J. Holmes, his x mark	16⅔
	Robert Rodgers	16⅔
	Robert Rodgers	16⅔
	D. Anderson, his x mark	16⅔
	W. Nelson	16⅔
	S. M. Smith, his x mark	16⅔
	Joe Johnson	16⅔
	W. Whitesides, his x mark	16⅔
	J. Nelson	16⅔
	J. Nelson	16⅔
	J. Rodgers, his x mark	16⅔
	S. Tilson	16⅔
	S. Tilson	16⅔
20	J. Falls, his x mark	16⅔
	Lee Warren	16⅔
	Lee Warren	16⅔
	L. Moorefield, his x mark	16⅔
	J. Williams, his x mark	16⅔
	H. Crow, his x mark	16⅔
	L. Mitchell, his x mark	16⅔
	T. Rorroll, his x mark	16⅔
	T. Robinson, his x mark	16⅔
	Noah Nelson	16⅔
	A. Bryant, his x mark	25
	E. Wilkins, his x mark	25
	Al. Moffett, his x mark	25
	W. Tilson, his x mark	25
	T. B. Gorber	25
	H. Harde*m*	25

Name.	No. bushels.
Joe Johnson	25
Jow Johnson	25
Isaac Worthington	25
J. Williams	25
Will. Sams	25
Joe Carter	25
Bob Bennett	25
John Burnett	25
J. Easley	25
Geo. Tipton	16⅔
W. Mourfield, his x mark	25
R. Blythe, his x mark	25
J. N. Rollins, his x mark	25
J. H. Porter	33⅓

Said orders are herewith filed, marked Exhibits 1 to 614, inclusive, and are made a part of this bill, but they need not be copied in the issuance of process.

21 Your orator charges that said parties were all working for the defendant, and that all of said accepted orders were issued and accepted by the defendant in an attempted payment of the wages of said parties. The coal in all of said orders is valued at twelve cents per bushel, and said company requires its laborers to pay that price for the same in accepting said orders.

Your orator further charges that within thirty days from the issuance of each of said accepted orders he presented each of them to the Knoxville Iron Company and demanded that it redeem them in cash, according to law. He avers also that he has presented all of said orders to the defendant on one of its regular pay-days and demanded their redemption according to law. The defendant refused to redeem said orders on both occasions when they were so presented to it for redemption, and it still refuses to redeem the same.

Your orator is advised that he has the right to file this bill to recover from the defendant the full value in money for the wages attempted to be paid to said parties by the defendant with said orders. He therefore charges that the defendant is justly indebted to him on account of said orders and the wages due to said laborers in the sum of $1,678.00, with interest.

The premises considered, your orator prays that the Knoxville Iron Company be made a party defendant to this bill by due process and apt words, and that it be required to answer the same fully and particularly, but not on oath, its answer on oath being here waived; that the defendant be required to redeem said coal orders at twelve cents per bushel, with interest; that your orator have a decree against the said defendant for $1,678.00 and interest; and if your orator has in any way mistaken his special relief, then

he prays for such other, further, different, and general relief as he is entitled to in equity and good conscience.

SAM. HARBISON,
By SHIELDS, *Sol.*

GREEN & SHIELDS,
Sols. for Comp.

22 STATE OF TENNESSEE, }
Knox County. }

I, Sam. Harbison, make oath in due form of law that the facts stated in the foregoing bill are true to the best of my knowledge, information, and belief.

SAM. HARBISON.

Sworn to and subscribed before me this June 2, 1899.

W. K. ANDERSON,
[SEAL.] *Notary Public.*

EXHIBIT No. 1 TO O. BILL.

To Knoxville Iron Company:

Let bearer have 41⅔ bushels of coal and charge to my account.

J. M. K.

Witness:

——— ———.

Endorsed: (Accepted April 8, 1899. Knoxville Iron Company, per O. H.)

Subpœna to Answer.

Issued third day of June, 1899. B. F. McCarty, D. C. & M.

STATE OF TENNESSEE:

Chancery Court at Knoxville.

To the sheriff of Knox county, Greeting:

Summon Knoxville Iron Company to appear before the chancery court at Knoxville on or before the first Monday of July next to answer the original bill which Sam. Harbison has filed in said court against it, and have you then and there this writ.

Witness J. F. Chumbley, clerk & master of our said court, at office in Knoxville, this 3rd day of June, 1899.

J. F. CHUMBLEY,
Clerk & Master,
By B. F. McCARTY, *D. C. & M.*

Notice.

To the above-named defendant:

You are hereby notified that you are required to make defense in

this case on or before the first Monday of July next or judg-
23 ment *pro confesso* will be entered against you.

J. F. CHUMBLEY,
Clerk & Master,
By B. F. McCARTY, *D. C. & M.*

Endorsed: Came to hand date issued. Executed as commanded by making known contents of this writ to W. P. Chamberlain, president Knoxville Iron Company, and by leaving with him a copy of the same & also copy of the bill this June 5, 1899. Jno. Maxey, D. sheriff.

Answer of Defendant.

Filed July 5, 1899. J. F. Chumbley, C. & M., by Lewis Tillman, D. C. & M.

In the Chancery Court at Knoxville.

SAMUEL HARBISON
vs.
KNOXVILLE IRON CO.

Answer of the Knoxville Iron Company to the bill of complaint filed against it by complainant in the above-styled cause.

For answer to so much of said bill as defendant is advised it is necessary for it to answer, it says:

I.

It admits that it is a corporation organized under the laws of Tennessee, with its principal office in Knoxville, Tennessee, and that it is engaged in the manufacture of iron, and as an incident thereto it mines and sells some coal. It admits that it employs quite a number of laborers both in its factory at Knoxville and in its mines in Anderson county.

II.

It is true that defendant from time to time accepts from its laborers who are employed in its factory at Knoxville orders for coal in the form set out in the bill, and now as a full explanation of the facts with reference to said orders defendant shows to the court that it has, and for many years has had, a regular monthly pay-day upon which every employee is paid in cash every cent that
is due him, and it is not true that defendant merely
24 pretends that upon said day it will pay off its said employees in cash. It is true it will not pay cash to its employees for wages at any other time than upon said regular pay-day. This custom was adopted for the convenience of defendant and to avoid annoyance and unnecessary expense, and a like custom prevails among all individuals, firms, and corporations who employ labor for any purposes, and defendant is informed that both the State and

National Governments have a like custom for the payment of their employees. In consequence of the fact that defendant operates in connection with its iron factory a coal mine in Anderson county, it nearly always has on hand in its Knoxville yard a large amount of coal which it sells to all persons who are willing to purchase, whether such persons are its laborers or the public generally. As a matter of convenience to its laborers, defendant has for some time past been accustomed to accept from them, after work has been performed, orders for coal, the blank form of which is correctly set out in the bill. A great many of its employees have never drawn an order upon defendant and many others have used them only in the purchase of coal for themselves. Defendant has never insisted upon any laborer giving any such order and has never used it as a general system of paying off its employees, but has been willing to accept such orders when any employee voluntarily draws the same and asks its acceptance. Defendant does not deny that some profit arises to it in consequence of accepting said orders. It does deny, however, that any discrimination whatever is thereby made against its employés. Defendant sells its coal cheaper than any other coal company in the city, and the coal called for by said orders is charged up to them at precisely the same price at which it is sold by defendant to all of its customers, and the only benefit accruing to defendant lies in the fact that it increases to some extent the sale of its coal. Defendant insists that by the issuance of said orders by an employee and its acceptance by defendant it is relieved from all liability to redeem the same in cash, yet it has never refused and is willing and ready to redeem the same in cash, provided the employee fails to negotiate the same and in good faith presents the same for redemption in person on a regular pay-day. This is done, however, solely for the accommodation of the laborer that he may, if he prefers, on that day receive compensation for his labor in money.

III.

Defendant has made no personal investigation of the financial standing of each of its laborers, and therefore cannot say how many of them have a "basis for credit." It denies, however, that they or any of them "are bound to receive their orders and sell them to obtain the necessaries of life." As before stated, by waiting until the regular pay-day the employee receives from defendant cash for every hour of their work.

IV.

Defendant endeavors to mine its coal as cheaply as possible, and it endeavors to so regulate the selling price thereof as to make a reasonable profit for itself, but in this it has not always been successful. It is not true, however, that defendant's laborers are compelled to lose the profit made by defendant. Neither is it true that defendant will not redeem said orders at the end of the month if presented in good faith by the laborer himself, but if said orders be transferred by the laborer defendant does refuse to pay cash there-

for, and will redeem them only in coal, as specified therein; and defendant most positively denies that in so doing it has violated or now violates any statute or other law of the State.

Defendant denies that complainant has purchased for value and in due course of trade the orders particularly described in his original bill, and it denies most positively that complainant is a *bona fide* owner and holder thereof. Defendant thinks it probable that complainant has at some price become the purchaser of said orders, but if such be the fact the prices paid therefor were much below their real value, and therefore the consideration paid for the
26 same was grossly inadequate; and, moreover, said orders show upon their faces that they were drawn for coal alone, and complainant was familiar with their contents when he purchased them, and was aware that they would be redeemed only with coal.

Defendant further shows that when each of said orders was accepted the party by whom it was drawn had performed labor for defendant, worth in value as much or more than the amount with which defendant credited itself for said order; that in each instance said order was voluntarily drawn by said laborer without any solicitation whatever on the part of the defendant; that there was, when each of said orders was accepted, a positive agreement between defendant and each laborer that he would accept coal in payment therefor, and that defendant would be required to pay nothing but coal in satisfaction of the same, and that said contract was fully and fairly made by both parties; and defendant denies that there is or can be in this State any law which can infringe upon its right or the rights of its employees to enter into such a contract.

VI.

Defendant admits that all of said orders were drawn by its employees, and further admits that when the same were accepted defendant was credited for said orders on its account with the persons so drawing them at the rate of twelve cents a bushel. Defendant further admits that complainant, within thirty days after the acceptance by the company of said orders and on one of its regular pay-days, presented each of them and demanded payment thereof in cash, and further admits that it refused to redeem the same in cash, but did then and there offer to pay the same on coal as called therein, and did tender to complainant the amount of coal specified in each order, but complainant wholly refused to accept the same; and defendant hath ever since been and is now ready and willing to pay the said orders in coal, as was specifically agreed when they were drawn, and as complainant was well aware when he accepted an assignment thereof.

VII.

Defendant denies that complainant stands in any attitude to in good conscience criticize its conduct toward its employees.
27 Defendant is informed that complainant obtained said orders by sending his agents among said employees, purchasing

said orders from them at a grossly inadequate consideration. Defendant denies that the legislature ever intended to enact a law to enable the usurer to draw a profit from the hard-earned rewards of labor. It denies that it is liable to complainant for any judgment for money on said orders, or if the court should find that under the statute there is a liability for such a judgment, it earnestly insists that in no event can said judgment be for a greater sum than the amount paid for said orders by complainant, as he cannot to any greater extent be regarded as a *bona fide* holder thereof.

And now, having fully answered, defendant prays to be hence dismissed with its reasonable costs.

And in attestation of the truth of said answer defendant hereto affixes its common seal.

[SEAL.] KNOXVILLE IRON COMPANY.
T. I. STEPHENSON,
Vice-P. & G. M.

LUCKY, SANFORD & FOWLER, *Solicitors.*

Deposition of Otis A. Brown.

Filed July 13th, 1899. J. F. Chumbley, C. & M.

Deposition of Otis A. Brown, taken at the office of Green & Shields, Knoxville, Tenn., on July 10th, 1899, in presence of counsel for both sides.

The said witness, OTIS A. BROWN, of lawful age, being duly sworn, deposed and said:

Examined by Mr. FOWLER:

Q. Mr. Brown, what position do you hold with the Knoxville Iron Company?

A. I am the secretary and treasurer of the Knoxville Iron Co.

Q. How long have you been holding that position?

A. Well, different length of time for the last twenty-odd years.

Q. How long have you been connected in an official way with the Knoxville Iron Co.?

28 A. I don't remember. Between fifteen and twenty years. I can't state exactly.

Q. About how many hands did you employ in the city of Knoxville?

A. Between 200 and 225, I presume.

Q. State whether or not you have a regular pay-day for the payment of these hands.

A. We have.

Q. Upon what day of the month is that regular pay-day?

A. It is on the Saturday nearest the 20th day of the month.

Q. In what do you pay your employees on that day?

A. Cash.

Q. State whether or not every employee or every laborer em-

ployed by your company can upon that day receive cash for his labor.

A. He can for the previous month's work.

Q. How long has that rule been in force by your company?

A. Well, for twenty years, to my knowledge.

Q. Is or not that thoroughly understood by every employee that takes work from you?

A. It is.

Q. State whether or not it is a general custom of all companies or persons employing laborers to pay them off on regular monthly pay-days.

A. It is. Well, not in all cases.

Q. Does or not such a rule prevail among the majority of the companies?

A. I think it does.

Q. State whether or not the orders which were filed with the original bill in this case were drawn upon and accepted by the Knoxville Iron Company.

A. They were.

Q. By what particular officer of the company were they accepted?

A. By myself.

Q. Please state under what conditions these orders were drawn.

A. Well, we set aside Saturday afternoon for the issuance of these orders for the employees that wanted them. They
29 came to the office and ask for as many such denominations as they want. If the money is due them on the book we issue the orders and accept them and the orders are charged to them.

Q. State whether or not any employee of your company is ever requested to draw these orders.

A. They are not.

Q. State whether or not the drawing of these orders and presenting them to the company for acceptance is a voluntary act of their part.

A. It is.

Q. Does or not each employee in drawing these orders understand that he is to accept *in* payment of the same only in coal?

A. He does.

Q. State whether or not it was with the understanding that they were to be paid in coal and nothing but coal that they were accepted by the company.

A. That was the understanding; that is the way they read.

Q. And did or not that understanding exist between you, as agent of the company, and the several employees when these orders were drawn?

A. It did.

Q. About what per cent. of the wages due employees were represented by the orders that were drawn from month to month—I mean that you accepted from month to month?

A. About 50 %, I presume. Some month- more and some months less, but I would say it would average 50 %.

Q. In what way does any benefit accrue to the company in consequence of the acceptance of these orders?

A. Nothing except the selling of the coal as stated in the orders.

Q. Your company is engaged in mining coal also, is it not?

A. It is.

Q. State whether or not your company has a coal yard.

A. We have.

Q. And do you keep coal on the market to be sold, to the public generally?

30 A. We do.

Q. At what prices do you sell your coal to the public?

A. Well, it depends on the grade—10, 11, & 12c.

Q. At what prices do you sell the coal that is called for in these orders?

A. These orders are figured at 12 cents. If a party wanted a lower grade of coal we gave him the difference in price in the number of bushels expressed in these orders.

Q. That is, as I understand, when one of these orders is presented and he wants 10-cents coal you give him enough in coal to make up that difference?

A. Yes, sir.

Q. State whether or not you sell your coal to the party who holds one of these orders at exactly the same price at which you sell it to an individual for cash.

A. We do.

Q. In case that your employees presented these orders upon a regular pay-day, would you or would your company redeem them in cash?

A. We would, if presented by the man who signed the order.

Q. Do or not all of your employees draw these orders upon the company?

A. Not all of them.

Q. Have you or not in your employ individuals who have never drawn any orders at all?

A. We have.

Q. I believe you say that these orders are charged to the parties drawing them at 12 cents per bushels?

A. They are.

Q. State whether or not they are ever issued unless the individual has already worked a sufficient amount for the wages thus worked out by him to amount to more than the value of the coal order.

A. Well, very rarely. Occasionally when a man is sick and cannot work we give him one, and he pays for it when he goes to work.

31 Q. Is or not it your general rule not to issue your order until that man has owing to him that amount on the pay-roll?

A. That's our rule.

Q. And was or not that rule in force in the issuance of these particular orders sued on in this case?

A. I presume it was. I could not state exactly as to every order, but that is the rule when orders are issued. If we issued an order to a man whom we did not owe anything, we took the risk.

Q. Can you recall any particular individual who drew either of the orders sued on to whom the amount called for in the order was not due at the time?

A. I cannot.

Q. Were you present when Mr. Harbison presented these orders for payment?

A. I was not.

Cross-examination by Mr. SHIELDS:

Q. Mr. Brown, you say you set apart Saturday evening upon which you would issue these orders to your employees?

A. Yes, sir; in which they can get them. That's the time they can call there and get them if they are entitled to them. We did that to avoid them coming in every day and every hour in the week. That is the reason we have a specified time.

Q. Your company prepares and prints these orders and has a stencil with which to stamp them accepted, and fills them out for the employee to sign them on Saturday afternoon when he gets them, do your not?

A. They are not filled out in advance.

Q. They are filled out when the man calls for them?

A. Yes, sir; they are filled up when the employee comes and asks for the denomination he wants; if the amount is to his credit, the orders are issued as he asks.

Q. What class of men come up and accept these orders on Saturday afternoon?

A. What class of men? What do you mean? We have
32 a good many classes as to wages, etc.

Q. Is it principally men that are day laborers, depending on their wages for their living?

A. The men that make the largest wages generally draw the most orders. They draw up as near, as full as they can.

Q. Now, is it not a fact that you know that many of the men who draw these orders week after week can't possibly use the amount of coal their orders call for in their families?

A. Well, we don't know anything about that, and don't care nothing about it. It is nothing to us. It is not presumed they would burn that amount of coal that some of them get; but this is a matter that we don't pay any attention to.

Q. Don't you know the fact that the men drawing these orders sell a great many of them on the market for money and goods?

A. It is so reported. I never bought any myself, so can only speak from hearsay.

Q. You have know- the fact that it was reported that they were

selling these orders for money and goods to live on for years, have you not?

A. Yes, sir.

Q. Is it not a fact that for years these orders have been brought in by different parties from all over town who are not working for you, in order to get coal on them?

A. Yes, sir.

Q. Is it not a fact that some persons living in Chattanooga sent up here to buy these orders and presented them to your company in payment of coal bills?

A. No, sir; that is not a fact to my knowledge, and I know all about that department, and that is absolutely not true.

Q. Mr. Brown, is it not a fact that some manufacturers living down the road occasionally present these orders amounting to hundreds of dollars in payment of coal?

A. Well, how far down the road do you mean—outside of Knoxville?

Q. Does any manufacturer anywhere present these orders in any considerable quantity for collection?

33 A. Manufacturers in Knoxville do; yes, sir.

Q. The men to whom these orders are issued are not working for the manufacturer who presents these orders for coal, are they?

A. No, sir.

Q. How long has this been going on?

A. I don't know; some three or four or five years, perhaps; I cannot say exactly; but these manufacturers present these orders to pay for coal they have bought from us. In other words, if a manufacturer bought a hundred dollars' worth of coal we took orders, and if he bought iron we did not take orders.

Q. You mean by this that manufacturers who buy up these orders don't attempt to use them with your company in any way except for coal?

A. That is it

Q. But they did present them in amounts running up into hundreds of dollars during the year in payment of coal they bought from you?

A. Yes, sir.

Q. Mr. Brown, you have spoken of other manufacturers having regular pay-days, in which they pay cash for labor. Is it not a fact that other manufacturers pay their employees once a week?

A. I don't know. I referred to the railroad shops principally. Some pay once a week; I don't know how many. I know it is customary for large manufacturing establishments to pay once a month. Almost everything is done by the ton and not by the day in our business.

Q. Now, Mr. Brown, when your regular pay-day comes, do you pay your employees every dollar that is due them up to that pay-day?

A. No, sir.

Q. How far back are the wages left up to that pay-day?

A. To the first of the month. We pay on the Saturday nearest to the 20th of each month—the balance due the employee on the first of that month or on the last day of the previous month for that month's work.

Q. Then, under this system of payment, your employees,
34 after each pay-day still have due them about twenty days' work?

A. From 15 to 20 days; yes, sir, unless he draws it up in coal orders in the meantime.

Q. Then, as I understand you, he can get his coal orders for the full amount of his wages or for *for* the full amount of the wages due him on Saturday evening if he will take it in coal orders?

A. Yes, sir; that is correct.

Q. But he can only get the cash on the Saturday nearest the 20th of each month, and in taking cash cannot get the amount that is due him between the first of that month and the pay-day?

A. Yes, sir; that's correct.

Q. Now, Mr. Brown, you have stated that the employees are sold the coal in these orders at the same price that you sell it to the public, and if they call for any cheaper grade of coal that 12 cent-per bushel, the amounts are made up to them in the number of bushels given in the orders. Are any of these orders for any cheaper grade of *caol* than 12 cents?

A. No, sir; all 12 cents.

Q. You have stated that it was understood between the company and the employees when they accepted these orders that the orders should be paid in coal only. Now, was this an express understanding between the company and each of its employees, or is it just such an understanding as grows out of the habit itself?

A. They always ask for coal orders, and they understand that it was for coal.

Q. You don't, then, say to them that this order is payable in coal only?

A. No, sir; they understand that from reading it.

Q. Then this understanding that you have spoken of between the company and the employees simply grows out of the fact that on Saturday evening the employee comes up and asks for a coal order, and the company then has him sign this order, and it is stamped "accepted" by the company?

A. Yes, sir; we have written notices posted in the mill, and in the office also where they get their orders, that on Saturday
35 evening at such and such hours coal orders will be issued.

Q. What hours are given for the issuance of these coal orders?

A. One to half past four.

Q. Mr. Brown, is it not a fact that many times in the course of a year your company has out more of these orders for coal than they could possibly fill if presented at your yard?

A. Well, I don't know about that. We have always been able to fill them when presented, except perhaps sometimes in the winter when the railroad was short of cars and we could not get as much

as we wanted; but we have never had any trouble on this account. We had plenty of coal when these identical orders were presented—enough to fill them.

Q. I will ask you, Mr. Brown, whether or not you know of any instance where an employee took out these orders and afterwards presented them to your company himself on a regular pay-day to obtain the cash on them.

A. No, sir; they have never been presented on pay-day.

Q. Were any orders taken out by an employee ever presented on a regular pay-day and cash demanded on them that you know of.

A. No, sir.

Q. If the orders were presented by an employee on a regular pay day and the cash demanded, and the date of the order should show that it was for wages earned between the first of the month and the regular pay-day, would you pay the order in cash?

A. No, sir.

Q. But you say that none of them have ever been presented?

A. No, sir.

Q. Have any of your employees ever been told that if on Saturday evening they would take up all the money that was due them, in coal orders, up to within a day or so of the pay-day, even, and would present these orders on the regular pay-day, they would be paid in the full amount of them?

A. I have never so informed them and don't know that any one else has.

36 Re-examination by Mr. FOWLER:

Q. You have been asked about the character or class of men that draw these orders. I wish you would state fully what your experience has been in that particular.

A. The men who earn the largest wages will of course draw more orders than those men who draw smaller wages, but they draw more in proportion to the wages than the men who receive the smaller wages.

Q. Which class are the highest-paid employees of your company?

A. The heaters, rollers, and puddlers.

Q. What are the highest wages paid—that is, about how much a month do the wages amount to that are paid to the best class?

A. Heaters' wages run from $125.00 to $160 or $175.00; rollers, from $85.00 to $100.00 and $110.00; puddlers, from $45.00 to $65.00 or $75.00, possibly, but not very often.

Q. Do you mean to say that those highest-paid workmen draw more orders in proportion to the amount they make than any other laborers of your company?

A. They do.

Further cross-examination by Mr. SHIELDS:

Q. What is the proportion of laborers that draw these high wages; *in* mean in numbers?

A. About half, I should think.

Q. What do the ordinary laborers constituting the other half that don't draw the high wages get per day?

A. From 90 cents to $1.20 per day.

Q. Is it not a fact that many of this lower class of employees take up all of their wages in coal orders?

A. They do, and some of that class never take coal orders.

Q. What proportion of the employees take up all of their wages in coal orders?

A. Seventy-five per cent., I presume.

Re-examination by Mr. FOWLER:

Q. Do you mean to say that seventy-five per cent. of all other employees take up all wages in coal orders?

A. No, sir.

37 Q. Will you please explain what you meant by 75%?

A. Well, a portion draw it all, a portion draw part of it, and a portion in the winter draw simply what they want to burn. The 75% referred to the number of men who get coal orders through the year. Some may get only $10.00 to $15.00 worth—enough for their winter coal. Others may get all of their wages in coal orders.

Q. Then, as I understand, there are about 25% who never draw any orders at all?

A. Yes, sir.

And further this deponent saith not.

O. A. BROWN.

Deposition of Sam. Harbison.

Filed July 13th, 1899. J. F. Chumbley, C. & M.

Deposition of Sam. Harbison, taken at the office of Green & Shields, Knoxville, Tennessee, on July 10th, 1899, in presence of counsel for both sides.

The said witness, being first duly sworn, of lawful age, deposed and said:

Examined by Mr. SHIELDS:

Q. Are you the complainant in this case?

A. Yes, sir.

Q. Where do you live and what business are you engaged in?

A. # 106 Gill street; engaged in general collecti ıg.

Q. State whether or not you purchased and are now the owner of the warrants or accepted orders of the Knoxville Iron Company that are sued on in this case.

A. I am.

Cross-examination by Mr. FOWLER:

Q. You also are engaged in shaving notes, orders, and various things of that kind, are you not, Mr. Harbison?

A. No; I don't make a business of that kind.

Q. But when a favorable opportunity offers, why you do
38 purchase notes, orders, due bills, and things of that kind?

A. I have bought a very few notes and accounts from parties that I had claims for collection and they wanted the money advanced before the claims were paid.

Q. Did you have anything for collection against the parties who drew these orders?

A. Some of them I have; yes, sir.

Q. About how many of them did you have claims against for collection?

A. I could not state as to that. These claims were not bought on those accounts I had against them. I have accounts against a great many parties working for the Knoxville Iron Co.

Q. Did you purchase these orders direct from the drawers?

A. Some of them I did.

Q. Did you buy them in person or by agent?

A. By agent. The most of them by agent; some of them I bought direct from the employees, and then Jim Kennedy bought some for me and V. C. Tindell also bought some for me, and there was another man whose name I have forgotten.

Q. Did you have these agents to go to the working places of these employees in order to make the purchases?

A. Yes, sir; the first orders that I bought I sent Mr. Tindell down to the company's office, and they had been selling these orders at 25 % discount; I told him to pay 15 % discount. That gave the men 10 cents more on the dollar that they had been getting for them before this act was passed.

Q. What particular individual told you he had sold these orders at 25 % discount?

A. That's a known fact all over town. I bought them that way before this act passed; got coal with them.

Q. How many of them did you purchase at 25 % discount?

A. I don't know how many, many as I wanted and could have got a good many more. I wouldn't take them only a sufficient amount to get coal with. The young man Tindell that works for me bought orders for 25 % discount and would let other
39 people have them to get coal with. Parties came up there and got orders from him in order to get coal with them.

Q. Of course you understood when you purchased these orders that they were made payable in coal and nothing else?

A. I understood what the face of the order said. I also understood what the act of the legislature said.

Q. What per cent. did you pay for these orders?

A. I paid 85% on the most of them. A few of them was a little less than that and a few of them was a little more than that. About 85% was the price that I paid for the bulk of them.

Q. Was the average price you paid more or less than 85% or about 85%?

A. About 85%.

Q. Did you voluntarily, when you began the purchase of these orders, pay 85%?

A. Yes, sir; that was the instructions that I gave the young man that I sent down—to go down there and get these orders and pay 85% on the dollar for them. I knew at the time that he could get orders for 75%.

Q. You thought that 15% on your investment for about twenty days was sufficient for a man to make?

A. I was satisfied with it; yes, sir.

Re-examination by Mr. SHIELDS:

Q. Mr. Harbison, did you pay cash for these orders?

A. I did.

Q. Do you know the character of the men who received these orders from the Knoxville Iron Company and sold them on the market here?

A. What do you mean by character—do you mean the financial standing?

Q. Yes; I mean their financial condition and their ability to raise money.

A. As a general rule, the class of men who work in the mill are poor men and a great many of them very poor pay. I mean when they get in your credit that it's very hard to collect from them. I have had quite a good deal of experience with them and I find that as a rule it is a hard class of men to collect from.

Q. Are they negroes or white men?

A. A great many of them are negroes.

Q. Do you know why they took these orders and sold them at such a discount?

A. A great many of them claimed when they went to sell them that they had to have the money to buy something to live on. It's hard for them to get credit.

Recross-examination by Mr. FOWLER:

Q. Have you a license to deal in securities?

A. Yes, sir.

Q. When was it taken out?

A. Taken out the day I commenced to buy these orders. It was either that day or the day before.

Q. You were preparing for this very thing, were you?

A. Yes, sir; I had not made a business of this kind, and I knew that the law required a license to buy securities, and I was a law-abiding citizen and took out the license.

And further this deponent saith not.

SAM. HARBISON.

Deposition of W. P. Chamberlain.

Filed July 24, 1899. B. F. McCarty, D. C. & M.

Deposition of W. P. Chamberlain, taken at the office of Lucky, Sanford & Fowler, in Knoxville, Tennessee, July 24, 1899, in presence of counsel for both sides.

Said witness, W. P. CHAMBERLAIN, being duly sworn, deposes as follows:

Direct examination by Mr. FOWLER:

Q. 1. State whether or not you are an officer of the Knoxville Iron Company.

A. I am its president.

Q. 2. How long have you been connected in an official way with that company?

41 A. Four years as president; previous to that for some six or eight years as a director.

Q. 3. How long have you been a stockholder of the company?

A. For thirty years, anyway.

Q. 4. Did you or not participate in its origination?

A. I did not.

Q. 5. I show you chapter 57 of the Acts of 1867–'8. Please state whether or not the Knoxville Iron Company was organized and is operating under the provisions of that chapter.

A. Yes. We are organized and operating under it.

Cross-examination by Mr. GREEN:

Q. 1. Captain, has the charter of the Knoxville Iron Company ever been amended?

A. No; not to my knowledge. I am strongly of the opinion that it has not.

Q. 2. Has there ever been any change in the charter?

A. No, sir; none that I am aware of.

WM. P. CHAMBERLAIN.

Sworn to and subscribed before me this July 24th, 1899.

B. F. McCARTY, *D. C. & M.*

CHAPTER 57, ACTS OF 1867–'8.

An act to incorporate the Knoxville iron works, and for other purposes.

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That Hiram S. Chamberlain, Jos. Richards, David Richards and David Thomas, their associates, successors and assigns are

hereby declared and constituted a body corporate, by the name and style of the "Knoxville Iron Company;" and by that name shall have succession for ninety-nine years; and be competent to
42 sue and be sued, in any court of law or equity; to have and use a common seal, and the same to alter at pleasure.

SEC. 2. Be it further enacted, That the capital stock of said company shall be one hundred and fifty thousand dollars, ($150,000) divided into shares of ($100) one hundred dollars each. The amount of the capital stock may be increased or diminished by a vote of a majority in value of the stockholders, at any regular or called meeting. In all elections, every stockholder shall be entitled to one vote for each share of stock, shown by the books of the company to have been owned by him. For (10) days prior to such election, certificates of stock shall be transferred on the books of the company, by the owner thereof, or by an attorney-in-fact, by him thereunto lawfully authorized.

SEC. 3. Be it further enacted, That the affairs of the company shall be managed by a board of directors, who shall be annually elected by the stockholders; the number, and the time and the place fixed by the by-laws; and shall hold their offices for one year and until their successors are elected and qualified. The board of directors shall elect one of their number president, for the term of one year, and all such other officers as shall be provided by the by-laws. The duty of all the officers shall, in like manner be provided by the by-laws.

SEC. 4. Be it further enacted, That the said corporation shall have power to establish, ordain, and at pleasure change, such by-laws for their government, as they may deem necessary, not inconsistent with the constitution and laws of the State of Tennessee; and purchase, hold and dispose of, such real estate, not to exceed seventy thousand acres, leases, mines, minerals, iron, coal, oil, salt, and personal property, as they may desire, or as they may deem necessary for the legitimate transaction of their business; to mine, bore, forge, smelt, work and manufacture, transport, refine and vend the same; to lay and conduct pipes, and construct train roads, or railroads, from their forges, works, or other places of business, to navigable rivers, or railroads, now constructed, or which may
43 hereafter be constructed; and to make all turnouts, switches and structures that may be necessary or convenient, in and about the same. The company to have and enjoy, and exercise, all the rights, privileges and powers belonging to, or incidental to corporations, which may be convenient in carrying out any business they are, in this act authorized to engage in, except the right to issue notes, to be used as circulating medium; or to engage in the business of banking.

SEC. 5. Be it further enacted, That the charter of the "Pullman, Kimball & Ramsey Sleeping Car Company" pased May —. —, be so amended, that the corporate powers of the said company shall be vested in and exercised by a board of directors, consisting of such number of persons, not less than three, nor more than seven,

as the stockholders of the said company may, from time to time, direct; and that this act take effect from and after its passage.

F. S. RICHARDS,
Speaker of the House of Representatives.
D. W. C. SENTER,
Speaker of the Senate.

Passed February 18, 1863.

44 SATURDAY, *August* 5, 1899.

Court met pursuant to adjournment.

Present and presiding: The Honorable Hugh G. Kyle, chancellor.

Record of yesterday read, approved, and signed, and the following additional proceedings were had, to wit:

Final Decree and Appeal.

SAMUEL HARBISON
vs.
KNOXVILLE IRON COMPANY. } No. 7510.

This cause came on to be heard before Hon. Hugh G. Kyle, chancellor, upon the pleadings, the proof on file, and the record at large, and the court, being of the opinion that the complainant is entitled to the relief prayed for in his bill, is pleased and doth accordingly so order, adjudge, and decree.

It is therefore decreed by the court that the complainant, Sam. Harbison, have and recover of the defendant, The Knoxville Iron Company, the sum of $1,678.00, this being the aggregate amount of the wages of the laborers of the Knoxville Iron Company, represented by the coal orders filed as exhibits to the original bill, at twelve cents per bushel for said coal, together with interest on said aggregate sum from the filing of the bill, amounting to $24.66, making a total of $1,702.66, together with all the costs of this cause, for all of which execution is awarded.

And from the foregoing decree comes the Knoxville Iron Company and prays an appeal to the next term of the supreme court, to be held at Knoxville, Tennessee; which prayer is granted upon defendant's giving bond as required by law.

And it further appearing to the court that all of said coal orders filed as exhibits to the original bill in this cause are exactly in the same language, except as to the name of the laborer signing the same and the date of the acceptance of said orders by the defendant company, at the request and by the consent of the parties to
45 this suit, and in order to save costs, the clerk & & master is directed to copy only one of said orders in making the transcript for the supreme court, and he will send all of said orders up with the transcript and as a part thereof.

When the reading of the deposition of W. P. Chamberlain was concluded defendant introduced and read as evidence to the cause from a volume of the acts of 1867–'8, published by authority of the legislature, chapter 57 of the private acts, passed February 18, 1863,

and entitled "An act to incorporate the Knoxville iron works, and for other purposes," which is found on pages 120 & 121 of the private acts published in said volume, and the clerk will copy said chapter 57 in the transcript immediately after the deposition of said W. P. Chamberlain.

Entries from Rule Docket.

1899, June 2.—Bill filed; pros. bond, $250, with Green & Shields sec'*th*.
1 copy bill (7,700 w'ds) and 1 subp'a to ans. & copy issued & delivered to sheriff.
5.—Subp'a returned executed by Jno. Maxey, D. S., on June 5 (sheriff's fee, $1.00).
July 5.—Answer of defendant filed & notice given.
13.—Deposition of Otis A. Brown filed; notice.
13.—Deposition of Sam. Harbison filed; notice.
24.— " " W. P. Chamberlain filed.
Aug. 5.—Decree *vs.* def't, $1,702.66, & costs & appeal, 35, p. 357.
1899, Aug. 5.—Appeal bond ($3,400.00) filed, with Lucky, Sanford & Fowler secr*ys*.

46 *Appeal Bond.*

Filed 5th day of Aug., 1899. J. F. Chumbley, C. & M., by Lewis Tillman, D. C. & M.

STATE OF TENNESSEE:

Chancery Court at Knoxville.

We, Knoxville Iron Company, principal, and Lucky, Sanford & Fowler, sureties, acknowledge ourselves indebted to Samuel Harbison in the penal sum of three thousand four hundred dollars, for the payment of which we bind ourselves, our heirs and personal representatives, jointly and severally, by these presents; but to be void if the said Knoxville Iron Company shall effectually prosecute its appeal taken to the supreme court of Tennessee, to be held at the court-house, in Knoxville, on the second Monday of September next, from the decree rendered against it in the chancery court, at Knoxville, on the 5th day of Aug., 1899, in the case of Samuel Harbison *vs.* Knoxville Iron Comp-ny, in said court, or, failing therein, shall pay the amount adjudged against it in said decree, with interest and damages and all costs, and also satisfy the decree that may be rendered against it by the supreme court in the premises.

Witness our hands and seals this 5th day of August, 1899.

KNOXVILLE IRON COMPANY, [SEAL.]
By J. A. FOWLER, *Att'y.*
LUCKY, SANFORD & FOWLER. [SEAL.]

47 *Bill of Cost.*

State tax $2.50
County tax 2.25

C. & M., J. F. Chumbley, for Knox Co.:

Filing bill, .25; aff't, .25; pros. bond, .75; copy bill, 7.50; sub. to ans., .75; copy, .25; filing ans., .25; notice, .25; taking 2 depositions, 2.00; 2 dockets, .20; rule, .10; final decree, .75; taxing cost, .50 ..... 13.80
D. Sh'ff Jno. Maxey, summ'g 1 def't 1.00
Notary H. L. Lyons, taking 2 depositions 2.00
Witness Otis A. Brown, 1 day 1.00
" W. P. Chamberlain, 1 day 1.00

1899, Aug. 5.—Decree *vs.* defendant, $1,702.66 & cost, & appeal to sup. court.

C. & M., J. F. Chumbley, for Knox Co.:

Appeal bond, .75; transcript, 18,900 w'ds, $18.90, & seal, .50. $20.15

48 STATE OF TENNESSEE, *County Tax,* } *ss:*

I, J. F. Chumbley, clerk & master of the chancery court at Knoxville, do hereby certify that the foregoing is a full, true, and perfect transcript of all the papers and bill of cost, except the original exhibits to bill, which were ordered to be sent up with transcript, as the same appear of record and on file in my office in the above-entitled cause.

Given under my hand and seal of said court, at office, in Knoxville, this Sept. 9th, 1899.

[SEAL.] J. F. CHUMBLEY, *C. & M.*

49 Filed Sept. 16, 1899. J. G. Stuart, D. C.

SAMUEL HARBISON *vs.* KNOXVILLE IRON COMPANY. } From the Chancery Court at Knoxville, Tennessee.

Brief and Assignments of Error of Appellant.

Allegations of the pleadings.

Complainant alleges in his bill that defendant is a corporation engaged in the manufacturing of iron and in mining and selling coal, and employe a large number of laborers in both its iron factory and in its mines in Anderson county, Tennessee; that on Saturday of each week, and perhaps on other days, it attempts to pay off a part of the wages due its laborers by accepting printed orders in the following words:

"To Knoxville Iron Company:

"Let bearer have — bushels of coal and charge to my account."

And that the laborer is required to sign said order, and it is accepted by a stamp in the following words:

"Accepted —— —, 1899.

KNOXVILLE IRON COMPANY,
Per —— ——."

That the defendant pretends it will pay its laborers in cash at the end of each month, but will not pay cash any other time, and in the *interim* issues to them orders, as aforesaid, well knowing that they have no basis of credit and are bound to receive said orders and sell them to obtain the necessities of life; that defendant mines coal very cheaply, and by the sale of its coal, as aforesaid, makes a good profit thereon at the expense of its laborers, and that it will not redeem said orders in cash at the end of the month, but requires the bearer to take coal in payment thereof, in open violation of the statutes of Tennessee; that complainant has bought for value and in the due course of trade and is the *bona fide* owner and holder of certain of said orders, a full and itemized list of which *are* set
50 forth therein and all of which were filed as exhibits to the original bill; that said orders were all issued to employees of defendant and in attempted payment of their wages; that the coal called for in all of said orders is valued at twelve cents per bushel, and the laborers were charged with *them* at that price; that within thirty days from the issuance of each of said orders and on a regular pay-day of defendant, complainant presented each of them to defendant and demanded that it redeem them in cash, according to law, but defendant refused and still refuses to redeem them in cash, and that therefore he has the right to recover of defendant in cash the total amount of said orders, to wit, $1,678.00.

Transcript, pages 2 to 25.

Defendant, in its answer, admits that it is a corporation engaged in the manufacture of iron and mining coal, and that it employs quite a number of laborers, and that from time to time it accepts from its employees in its iron factory orders for coal in the form set out in the bill. As a statement of the facts with reference to the issuance of said orders, defendant alleges in its answer that for *a*many years it has had a monthly pay-day, upon which every employee is paid in cash the amount then due him, and that it will not pay cash upon any other day; that said custom was adopted to avoid annoyance and unnecessary expense, and a like custom prevails among employers of labor, both private and public; that it keeps on hand in its coal yard in Knoxville a supply of coal, which it sells to both its laborers and all other persons desiring to buy; that as a matter of convenience to its laborers defendant has been accustomed to accept from them, after work has been performed, orders for coal in the form set out in the original bill; that a great many of its employees have never drawn an order on defendant

and many others have used them only in the purchase of coal for themselves; that it has never insisted upon any laborer drawing such an order and has never used it as a general system of paying off its employees, but has been willing to accept them when
51 any employee voluntarily draws and presents the same for acceptance. It does not deny that some profit arises to it in consequence of accepting said orders, but does deny that any discrimination is made against its employees, the coal called for in said orders being charged up to them at the same price at which it is sold to all other customers, and its only profit consisting of an increase in the sale of its coal. It denies all liability to redeem said orders in cash, but for the accommodation of its employees says it is ready and willing to so redeem the same when presented to them in person on a regular pay-day. It denies that said laborers are bound to receives and sell said orders to obtain the necessaties of life, as by waiting until the regular pay-day they would be paid their wages in cash without discount. It denies that it will not redeem said orders in cash on a regular pay-day if they be presented by the laborers themselves, but admits that it will not redeem said orders for cash if transferred by the drawers thereof, and denies that by so doing it violates any law of the State.

It denies that complainant has purchased for value and in due course of trade the orders described in the bill, and especially denies that he is a *bona fide* holder thereof. It alleges that if complainant purchased said orders the purchase was made at prices far below their real value and for a grossly inadequate consideration, and insists that, for this and the further fact that said orders show upon their faces that they are redeemable in coal, complainant is not a *bona fide* holder thereof. Defendant says that when each of said orders was accepted the party to whom it was drawn had performed labor for defendant worth in value as much as or more than the amount with which defendant credited itself for said order; that in each instance said order was voluntarily drawn by said laborer without any solicitation whatever on the part of the defendant; that there was when each of said orders was accepted a positive agreement between defendant and each laborer that he would accept coal in payment thereof, and that defendant would be
52 required to pay nothing but coal in satisfaction of the same, and that said contract was fairly and fully made by both parties, and it denies that there is or can be in this State any law which can infringe upon its right or the right of its employees to enter into such a contract.

It admits that the orders specified in the bill were all drawn by its employees for wages; that they were charged with the coal at twelve cents per bushel, and that they were presented and demand made by complainant for payment in cash, which demand was refused, and coal offered in lieu thereof, as called for in said orders.

It alleges that complainant sent his agents among its employees and purchased said orders for a grossly inadequate consideration, and denies that he stands in an attitude to criticise its conduct. It insists that the legislature never intended to enact a law to enable

the usurer to draw a profit from the hard-earned rewards of labor, and that complainant cannot in any event be a *bona fide* holder of said orders for a larger sum than he paid therefor.

Transcript, pages 27 to 31.

Statement of the Facts.

There is no conflict in the testimony, and the facts proven are substantially as stated in the answer.

It is proven by Mr. O. A. Brown, the defendant's secretary and treasurer, that defendant employs from 200 to 250 laborers in its factory in the city of Knoxville. It has had for twenty years a regular pay-day on the Saturday nearest the 20th of each month. On said day each employee is paid cash for all labor performed by him during the previous month, which fact is know- to all its employees, and a similar rule for the paying of employees prevails among the majority of persons and companies employing laborers. The orders filed with the original bill were drawn upon defendant and accepted by the witness as its agent. From one to half past four on each Saturday said orders may be drawn and accepted, but no em-
53 ployee is ever requested to draw said orders, and the drawing and presenting of them for acceptance is a voluntary act upon their part. Each employee in drawing said orders understands that it is payable only in coal, and it is with that understanding that the company accepts said orders, and such was the understanding and agreement between the witness, as defendant's agent, and the drawers of the orders in question when they were drawn and accepted.

About 50 % of the wages of employees in the factory is ordinarily paid in this way. Defendant is also engaged in mining coal and keeps a coal yard in the city of Knoxville. There are three grades of coal, which it sells at ten, eleven, and twelve cents, respectively. The coal called for in the orders drawn by employees is all figured at twelve cents per bushel, but if the bearer desires a cheaper grade of coal he is given a sufficient amount to make up the difference in price. The coal is therefore sold to the bearers of said orders at the same price it is sold to all other persons, and the only profit arising to defendant is in the increased sale of coal. If an employee should present an order drawn by him on pay-day, it would, for his accommodation, be paid in cash, but no cash is ever paid on said orders to a transferee. Said orders are not accepted unless the drawer has already worked out the amount called for therein, and this rule was in force when the orders sued on were accepted.

Transcript, pages 32–36.

Complainant testifies that he purchased and is the owner of the orders sued on in this case; that some of said orders he purchased in person, but most of them were bought by his agents, whom he had go for that purpose to defendant's factory, and that he purchased them at an average discount of 15 per cent.

Transcript, pages 43–45.

Defendant was organized and is now operating under a special charter granted by the legislature on the 18th day of February, 1868, which is found in chapter 57 of the Private Acts of 1867-'8, Dep. of W. P. Chamberlain, pages 46, 47.

Said charter continues for ninety-nine years after the date of enactment thereof, and no power was reserved by the legis-
54 lature to amend the same.

Trans., pp. 48, 49.

Complainant insists that he is entitled to a judgment for the value of said orders on an estimate of twelve cents for each bushel of coal called for therein by virtue of chapter 11 of the Acts of 1899, the first section of which reads as follows:

"SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations, and companies using coupons, scrip, punchouts, store orders, or other evidence of indebtedness to pay their laborers and employees, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employee or *bona fide* holder, in good and lawful money of the United States; provided, the same is presented and redemption demanded of such person, firm, company or corporation using same as aforesaid, at a regular pay-day of such person, firm, company or corporation to laborers or employees, or is presented and redemption demanded as aforesaid by such laborers, employees or *bona fide* holders at any time not less than thirty days from the issuance and delivery of such coupon, scrip, punchout, store order or other evidence *on* indebtedness to such employees, laborers or *bona fide* holders. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness: Provided further, said face value shall be in cash the same as its purchasing power in goods, wares and merchandise at the commissary, company store or other repository of such company, firm, person or corporation aforesaid."

By the second section it is provided that after demand made and payment thereof refused the holder may maintain an action to recover the value of such evidence of indebtedness.

Decree.

The chancellor was of the opinion that complainant is entitled to the relief sought, and pronounced judgment against the defendant for $1,678.00 and costs, from which decree defendant prosecuted an appeal. Transcript, page 50.

55 *Assignments of Error.*

The chancellor erred in holding that complainant is entitled to receive a judgment for money on the orders exhibited with the original bill, and in pronouncing a judgment thereon for the said sum of $1,678.00 and costs.

Complainant's bill should have been dismissed for the following reasons:

I.

It was not intended by said act to prevent persons or companies employing laborers from issuing orders redeemable otherwise than in money in favor of their employés, when such is done for the convenience of such employés and at their voluntary request, and by agreement entered into after their labor had been performed.

The act says that all persons "using" coupons to pay their laborers shall redeem the same in money. The word "using" in this connection manifestly means "accustomed to use" *and refers only to persons who use coupons, etc., as their usual means of paying for labor.*

Again, the phrase "to pay" clearly implies *an arbitrary custom of settling wages dependent alone upon the will of the employer.* The language of the act contains no intimation that its provisions shall apply when the payment is by the means specified by the concurrence and agreement of *both* parties. It does not profess to attack specific contracts made between the parties *after the labor has been performed*, in which it is agreed what shall be accepted in payment of wages. With greater reason could it be made to apply to a general contract between the employer and the employee entered into at the beginning of the employment, whereby it is agreed that the employee shall accept, in satisfaction of his wages, coupons and orders not redeemable in money. Orders used under a contract of this character would be the usual means of payment; and since by the said general contract the employee loses his option to accept or not such order when presented in payment of wages, the payment would be *an arbitrary act of the employer.* Again, said act does not declare that all coupons,
56 orders, etc., shall be redeemed in money, but only those for which money shall be demanded by the holder—that is, it does not destroy the option of the holder to accept anything in payment thereof that he may desire. Therefore no attempt is made in said act to destroy the right *of the holder* to make a contract as to what he will receive in redemption of his order, nor does the statute undertake to fix any time when such right may be waived by him. It is not essential that such waiver be made at the same moment with the demand for payment. There is no reason why it should not be made *at any time before* payment. If after said orders were purchased by said complainant, but before the next regular payday, he had entered into a solemn contract with defendant to accept payment in coal, would it be insisted that he could have repudiated said contract and have enforced their redemption in money alone? But if complainant had the right to thus bind himself by contract, the drawers had *a* like powers, either when the orders were drawn or at any time thereafter while they were in their possession, and since the orders are not negotiable instruments, and show on their faces that they are redeemable in coal and not in money, complainant is bound by the contract thus made by said drawers and expressed in said orders.

The act was unquestionably passed to prevent employers from

establishing, as their ordinary means of paying wages with or without the expressed consent of their employees obtained beforehand, the issuance of store orders, etc., and to compel persons hiring labor to establish a regular pay-day upon which the laborer may receive his wages in money. This statute is an innovation upon the common law, and, if construed as insisted by complainant, is an open defiance of that right which every one who is *sui juris* is supposed to posses—the right to enter into a valid contract. It should not, therefore, be extended by construction to embrace circumstances and conditions which do not clearly fall within its spirit as well as its letter.

In support of this construction contended for by defend-
57 ant, we submit the following authorities:

The legislature of Kentucky passed an act which provided "That any corporation or person or persons having the ownership or control of any factory, mine, or workshop in this Commonwealth, who shall violate the provisions of section two hundred and forty-four of the constitution, reading as follows: 'All wage-earners in this State employed in factories, mines, workshops, or by corporations shall be paid *for their* labor in lawful money,' shall be guilty of misdemeanor, and on trial and conviction, had in any court of competent jurisdiction, shall be fined not exceeding $500 for each violation thereof."

It will be observed that the language of the Kentucky constitution is much stronger than that of the act under consideration. It says: "*All wage-earners shall be paid for their labor in lawful money.*"

The Avent-Beattyville Coal Company was indicted for violating this act. The only witness called was one Henry Crough, who testified that he worked for defendant in its coal mines under a contract that on the Saturday nearest the 15th of each month he should be paid in money all the wages due him for work during the previous month; that he voluntarily applied to defendant's clerk and obtained from him checks payable in merchandise; that he was never asked to take any of these checks, but applied for them himself, always before his wages were due under the contract, and used them at the company's store, and that the defendant did not pay money for these checks. The defendant was found guilty. On appeal the supreme court, in its opinion, says: "The legislation in question is wholly new to our State. If its letter is to control, the delivery of these checks as payments on the wages earned prior to the regular pay-day of the company is in violation of law. A miner works a week and has earned a certain sum. His wages are not due, but he is in need of provisions for his family. He applies to the company for relief, and it delivers to him in part payment of his wages, not lawful money, but orders or checks on its store
for the provisions he needs. This is confessedly a great con-
58 venience for the workmen, and we cannot believe it is in violation of a reasonable construction of the law. The object of the legislation was to protect the weak against the strong, and the wage-earner is regarded as liable to imposition and oppression in the hands of his employer. *The statute gives him the right*

to demand his wages in money whenever it is due him, and any devise resorted to by the employer requiring the acceptance of other than lawful money for labor is prohibited. If the time between pay-days were unreasonably extended, or if before employing laborers agreements were exacted of them that they were to take even a part of their earnings in merchandise, the offense against the law would be complete. * * * The object in view is the same in all legislation—to prevent oppression and overreaching. The law says, however, that the wage-earner shall be paid for his labor in lawful money. But when? It does not say every day or every week; hence *we conclude that contracts fixing pay-days at reasonable periods may be made, on which, and not before, the laborer may demand his pay in money.*"

Avent-Beattyville Coal Co. *vs.* Commonwealth, 28 L. R. A., 274.

The case of Hancock *vs.* Yaden (Ind.), 6 L. R. A., 576, which is relied on by complainant to support his position in another branch of this case, is a strong authority in support of the defendant's contention as to the construction of the statute. It was provided by statute by the legislature of Indiana "that employees of persons, firms, companies, associations, or corporations engaged in mining or manufacturing shall be paid at least once in every two weeks in lawful money of the United States, and that any contract to the contrary, or to waive the provisions of the statute, shall be null and void." Hancock and Conkle were engaged in operating a coal mine, and Yaden, who was an employee, entered into a specified contract whereby he agreed to accept payment for all or any part of his services, at the option of his employers, in merchandise, and waived his right to demand payment in lawful money of the United States. This contract was set up as a defense to plaintiff's action. The Supreme Court, among other things,
59 said: "The sufficiency of the answer must, it is clear, depend entirely upon the validity of the contract on which it is founded, since, if that control is invalid there is no agreement to accept payments in goods or merchandise, and when there is no such agreement payment cannot be made in property. Another thing can be added by way of preface, and that is this: We are not here concerned with the question *of what parties may do after services have been performed,* for here the question is, What contract may they make before the relation of employer and employé begins? It is sufficiently evident from what we have said that the only question which we can properly consider or decide is whether the antecedent contract was vailid in so far as it assumes to waive the right of the appellee to be paid his wages in lawful money of the United States, and to this question we confine our discussion, and give judgment upon it and no other. Our judgment is that the antecedent contract is entirely void in so far as it assumes to waive the appellee's right to receive his wages in money. *If there were no valid statute prohibiting such a contract, it would be competent for the parties to make it.* So that the judgment of the court hinges upon the ques-

tion whether there is a valid statute prohibiting such a contract. There is a statute which in terms prohibits such contracts, and if it does not violate some provision of the Constitution, it totally destroys the contract upon which the defense is founded." Again: "But no limitation in the instrument (the Constitution) so operates as to prevent the law-making power from prohibiting classes of citizens from *contracting in advance* that the wages of miners shall not be paid in lawful money of the United States. It would be not only unnecessary but improper to enter upon the work of ascertaining to what extent *to* Constitution restrains the legislature from regulating or restricting the right to contract." And again, in closing the opinion, the court says: "It (the statute) fixes no price upon any man's labor;
it leaves the parties to do that; but it does require them to
60 refrain from contracting, before the relation of employer and employés begins, for payment in anything except the lawful money of the United States. *It does not* preclude parties from making an accord and satisfaction after wages have been earned and services rendered, although it does command that the antecedent contract shall not provide that payment may be made in something other than lawful money of the nation."

Now, the statute in its terms makes no distinction whatever between contracts made before the wages are earned and those made afterwards. It declare that all contracts contrary to or intended to waive the provisions of the statute shall be null and void. Yet the court held that the statute referred only to *contracts made before the services were rendered, and before the relation of employer and employé begins.* It is true that the contract interposed as a defense was made at the beginning of the service, but it was, nevertheless, necessary for the court to determine how broad the provisions of the statute were. The validity of the contract depended upon the constitutionality of the statute. If the statute was constitutional, the contract was void; but if the statute were unconstitutional, the contract would have been valid. *But the constitutionality of the statute did not depend upon the nature of the contract in question.* If the statute had been so broad as to necessitate a construction embracing contracts the right to make which cannot be interfered with by the legislature, then the act would have been void and the contract valid, regardless of whether the legislature had the power to prevent the making of that particular contract or not The court held that it was not necessary to determine whether the legislature could prevent the making of contracts between employers and employés, *after wages have been earned*, as to what should be accepted in payment thereof, and by so doing it held that said statute, notwithstanding it was so broad in terms, did not apply to such contracts.

II.

Complainant is not a *bona fide* holder of said orders within
61 the meaning of the statute.

Not only do said orders call for coal, but they were purchased by complainant at a discount of 15 %, which would be

equivalent to an annual discount of more than 180 %. The legislature certainly intended said act to inure to the benefit of the laborer and not the usurer; and it should be so construed as to correct existing evils, and not to create other evils equally or more pernicious. Complainant seeks to enlist the sympathy of the court by showing that said orders were, previous to the passage of the act, being heavily discounted. It does not appear, however, that since its passage their value has materially increased. Complainant claims to have paid 85 %, but says this was done voluntarily, as he could have gotten them cheaper. There is no assurance that complainant will always retain that tenderness of heart which forbids him from exacting from labor a discount of more than 180 % per annum. Before the act the man who desired to buy his winter's coal got the advantage of the discount. Now, if complainant's interpretation of the act is correct, the usurer, the man who fattens by his fellowman's misfortunes and straightened circumstances, obtains the advantage. These orders can pass into the hands of *some* parties who have no right to demand their redemption in money. Otherwise the phrase "*bona fide*" would be meaningless; and there certainly can be no stronger reasons for excluding any other class of persons from the benefit of the act than there are for excluding those who obtains such claims in the manner complainant is shown to have obtained those sued on in this cause.

Defendant insists that if complainant has any right of recovery it can in no event be for more than the amount actually paid by him for said orders.

Green *vs.* Stuart, 7 Baxter, 419.

Oppenheimer *vs.* Bank, 97 Tenn., 19.

III.

If the court should be of opinion that the provisions of said act did not apply to the facts proven in this case, it would be
62 unnecessary to pass upon its constitutionality; but if the court should adjudge that it was intended by said act to render void at the option of the employé a contract voluntarily entered into between him and the employer after his labor had been performed, whereby he agreed to accept an order for coal in payment of all or any part of the wages already earned by him, then we insist with absolute confidence that said act is in conflict with that part of section 1 of the 14th amendment to the Constitution of the United States which says: "*No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law.*"

The word "property," as used in the fourteenth amendment, includes labor. "Property" is everything which has an exchangeable value, and the right of property includes the right to dispose of it according to the will of the owner. "Labor is property, and, as such, merits protection; *the right to make it available is next in im-*

portance to the rights of life and liberty. It lies to a large extent at the foundation of most other forms of property."

Justice Swayne in Slaughter-house cases, 16 Wall., 127.
Justice Sawyer *In re* Tibercio Parrott, 1 Fed. R., 506.
The Stockton Laundry case, 26 Fed. Rep., 614.
In re Jacobs (N. Y.), 50 Am. Rep., 640.

It also includes the right to pursue any lawful employment in a lawful manner.

Same cases, and—
In re Grice, 79 Fed. Rep., 640.

And the right to make lawful contracts. As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, it is safe to say that a State law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision. Indeed, we may go a step further and say that as
63 property can only be legally acquired by contract, *a general prohibition against entering into contracts with respect to property, or having as their object the acquisition of property, would be legally invalid."*

Holder *vs.* Hardy, 169 U. S., 391.
Allgeyer *vs.* Louisiana, 165 U. S., 578. See also—
Stratton Claimants *vs.* Morris Claimants, 5 Pick., 497.
Bank *vs.* Devine Grocery Co., 13th Pick., 603, and the other cases hereinafter cited.

The property and privileges of corporations are embraced within this amendment equally with those of other persons.

Santa Clara Co. *vs.* Southern Pac. R. R., 118 U. S., 394.
Pembina Mining Co. *vs.* Oenna, 125 U. S., 181.
Minneapolis R'y Co. *vs.* Beckwith, 129 U. S., 26.
Dugger *vs.* Ins. Co., 11 Pickle, 250.

The constitutionality of similar acts has been passed upon by the courts of a number of other States, and by a large majority of said courts the- have been held unconstitutional. We invite the court's consideration of a number of said decisions.

Illinois.

The legislature passed an act requiring the owner of every coal mines to furnish and place upon the railroad tract adjacent to such mine a scale upon which all coal should be weighed and which should be subject to inspection by the miner and all other parties interested, providing for punishment by fine of imprisonment in case of violation, and declaring all contracts dispensing with the weighing of coal in such manner void. One Miller, having been indicted under that statute, set up as a defense that he had a contract with the miners for fixing their compensation by means other than that of weighing the coal. The supreme court held the act void

because it was not the law of the land. Miller *vs.* People, 117 Ind., 294; 5 W. R., 15.

In May, 1891, the legislature passed an act which provided that it should by unlawful for any person, company, corporation,
64 or association engaged in any mining or manufacturing business to be interested directly or indirectly in the keeping or controlling of any store, shop, or scheme for the furnishing of supplies of any kind to his or their employees, and by the second section a violation of the act was made a misdemeanor.

This act was by the supreme court of Illinois declared unconstitutional, the particular ground upon which the decision was based being that the act was partial legislation, in that it was made unlawful for certain individuals to run a store in connection with their business, while it remained lawful for those engaged in other business and employing labor therein to run a store in connection therewith; but the court quoted with approval the language of other courts, to the effect that the legislature had no power to deprive a person of the right to follow a lawful business and to make valid contracts as an incident thereto.

Frorer *vs.* People, 16 L. R. A., 492 (March 26, 1892).

On June 10th, 1891, the legislature of said State passed an act providing that the wages of coal miners, if based on the quantity of coal mined, should be computed on the whole quantity before screening, and that all coal should be weighed in the cars before being dumped into screens or chutes, and making a violation of said act a misdemeanor. A party having been indicted for violating said act, it was shown on the trial that the witness upon whose testimony the prosecution relied for conviction entered into a contract with the company when he began service which contained the express provision that he should be paid by weight after the coal had passed over the screens. On appeal to the supreme court, the act was held void on the ground, as stated in the syllabus, that it was "an attempt to take away without due process of law the property right of contracting in respect to such wages." Ramsey *vs.* People, 17 L. R. A., 853.

On April 23rd, 1891, an act was approved which required every manufacturing, mining, quarrying, lumbering, mercantile, street, electric, and elevated railway, steamboat, telegraph, tele-
65 phone, municipal corporation, incorporated express company, and water company to pay the wages of their employees weekly. The defendant was indicted for the violation of this act. It was shown that the witness McGuire, upon whose evidence the defendant was convicted in the lower court, and the defendant had entered into a contract, by which it was agreed that he should be paid on the first Saturday after the 10th of each month. The supreme court held the act unconstitutional, and in the course of its decision said: "Property in its broader sense is not the physical thing which may be the subject of ownership, but is the right of dominion, possession, and power of disposition which may be required over it. And the right of property preserved by the Con-

stitution is the right not only to possess and enjoy it, but also to acquire it in any lawful mode or by following lawful industrial pursuits which the citizen in the exercise of the liberty guaranteed may choose to adopt. (Labor is the primary foundation of all wealth.) The property which each one has in his own labor is the common heritage. *And, as an incident to the right to acquire other property, the liberty to enter into contracts by which labor may be employed in such a way as the laborer shall deem most beneficial and of others to employ such labor is necessarily included in the constitutional guarantee.*"

Braceville Coal Co. *vs.* People, 147 Ill., 66.
22 L. R. A., 340, Oct. 26, 1893.

An act passed in 1887, as amended by an act of 1891, required all coal operators in the State who paid their miners by weight to provide accurate scales for the weighing of all coal hoisted or delivered from their mines, and further required that all coal should be accurately weighed and a record of the same should be kept for the inspection of the miners.

This act was also declared unconstitutional by the supreme court, the court, among other things, saying:

"It seems that a law which deprives men engaged in the business of mining from contracting with each other for the purpose of ascertaining the weight of coal mined or the amount due them in any manner mutually satisfactory cannot be sustained; that such is the effect of this law is the contention of counsel for the people, and it is only upon the assumption that the law does so control the power to contract that a conviction could have been had in this case; for, as already seen, the parties had contracted otherwise. The act takes away the freedom of contracting by the parties for the ascertainment of the weight of coal, except by a certain method, and, in our opinion, it is unconstitutional."

Harding *vs.* People, 160 Ill., 459.
32 L. R. A., 455 (March 30th, 1896).
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Pennsylvania.

The legislature of Pennsylvania passed an act which provided that all orders given by employers engaged in the business of manufacturing to their workmen, payable in goods or anything but money, should be void. An action was brought by an employee to recover money on an order drawn by him on the company and payable in coal. A judgment was pronounced in favor of the plaintiff in the court below. On appeal the court, speaking of certain sections of said act, said: "They are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the legislature to do what in this county cannot be done—that is, to prevent persons who are *sui juris* from making their own contracts. The act is an infringement alike of the right of the employer and the employee. He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his

iron or coal, and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges, and consequently vicious and void."

Godcharles *vs.* Weigman, 11*a* Penna., 431.

A statute which required monthly payment of wages by mining or manufacturing companies was held unconstitutional, so far as it amounted to making a contract between parties against their will; and it was further held that said act could give no right to the payment of wages before the time agreed upon by the parties
67 by reason of a provision that a contract for payment otherwise than according to the statute should be void.

Bauer *vs.* Reynolds, 3 Penna. Dist. Rep., 502.

The act of May 20th, 1898, which provides that miners' wages should be paid in lawful money of the United States was held unconstitutional so far as it attempted to preclude miners from making valid contracts to accept other than money in payment of their wages.

Showalter *vs.* Ehlan, 5 Penna. Sup. Ct., 242.

A statute which declared it to be unlawful to screen coal before it was weighed and credited to the miner, when such miner was paid by weight or quantity, was held unconstitutional.

Commonwealth *vs.* Brown, 6 Penna. Dist. Rep., 773.

West Virginia.

The legislature of West Virginia, in 1887, passed an act which provided, in substance, that it should be unlawful for any person, firm, company, corporation, or association engaged in mining or manufacturing, and who should be interested in merchandising, to knowingly and wilfully sell any merchandise or supplies whatsoever to any employee at a greater per cent. or profit than merchandise and supplies of a like character, quality, and quantity were sold to other customers buying for cash and not employed by them. The violation of said act was made a misdemeanor.

This act was, by the supreme court, held unconstitutional. The court, in the course of its opinion, says: "It is an attempt on the part of the legislature to do what, in this country, cannot be done—that is, to prevent persons who are *sui juris* from making their own contracts. The act is an infringement alike of the rights of the employer and the employee. More than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States.

The ground on which this act is condemned is that it is class legislation, and an unjust interference with the rights, privi-
68 leges, and property of both the employer and the employee, and places upon both the badge of slavery by denying to one the right of managing his own private business, and assuming that

the other has so little capacity and manhood as to be unable to protect himself or manage his own private affairs."

State *vs.* Fire Creek Coal Co., 6 L. R. A., 359.

At the same session the legislature passed another act, which provided that it should be unlawful for any person, firm, corporation, or association engaged in mining coal, ore, or other minerals, or mining or manufacturing them or either of them, or manufacturing iron or steel or both, or any other kind of manufacturing, to issue for the payment of labor any order or other paper whatsoever unless the same purported to be redeemable for its face value in lawful money of the United States, bearing interest at the legal rate, made payable to the employee or bearer, and redeemable within a period of thirty days by the party issuing it. The violation of this act was declared a misdemeanor.

This act was likewise declared unconstitutional, the court saying: "A person living under the protection of the United States Government has the right to adopt and follow any lawful industrial pursuit not injurious to the community which he may see fit, and, as incident to this, has the right to labor, make contracts in respect thereto upon such terms as may be agreed upon by the partners, to enforce all lawful contracts, to sue and give evidence, and to inherit, lease, purchase, sell, and convey property of every kind. The enjoyment of deprivation of these rights and privileges constitute the essential distinction between freedom and slavery; between liberty and oppression. These principles have been fully recognized and announced in many decisions of the Supreme Court of the United States and other courts (citing many cases). The vocation of an employer, as well as that of his employee, is his property. Depriving the owner of property of one of its attributes is depriving him of his property under the provisions of the Constitution. The right to use, buy, and sell property and contract in respect thereto, including contracts for labor, which is, as we have seen, property, is protected by the Constitution. If the legislature, without any public necessity, has the power to prohibit or restrict the right of contract or business, then it may prevent the prosecution of all trades and regulate all contracts."

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State *vs.* Goodwill, 6 L. R. A., 621.

On the 7th day of March, 1891, the legislature passed an act very similar to the one considered by the court in the case of State *vs.* Goodwill, and on March 9th, 1891, another act was passed providing for the screening of coal. It will be remembered as an historical fact that our own as well as many other legislatures about this time passed many acts for the supposed benefit of the laboring classes, and political parties were vying with each other in pressing such legislation. With public sentiment in this condition, the question of the constitutionality of said acts was presented to the supreme court, which body then stood three for and three against their constitutionality, and, it taking a majority of the court to declare an act unconstitutional, their validity was sustained.

Peel Splint Coal Co. *vs.* State, 17 L. R. A., 385.

New York.

The legislature of New York passed an act which prohibited the manufacture of cigars, or preparation of tobacco in any form, on any floor or any part of any floor in any tenement-house if such floor was by a person occupied as a home or residence for the purpose of living, sleeping, cooking, or doing any household work therein. Said act also defined what was meant by a tenement-house under its provisions, and a violation of it was made a misdemeanor. This act was declared unconstitutional.

In re Jacobs, 98 N. Y., 98; 50 Am. *Dec.*, 636.

An act was likewise declared unconstitutional which prohibited the manufacture or sale for food of any substitute for butter or cheese produced from pure, unadulterated cream or milk, the court, among other things, saying: "The term liberty, as protected
70 by the Constitution, is not cramped into a mere freedom from physical restraint upon the person of the citizen as by incarceration, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. In the language of Andrews, J., in Bertholf *vs.* O'Reilly, 74 N. Y., 515, the right to liberty embraces the right of man to exercise his faculties and to follow a lawful avocation for the support of life, and as expressed by Earle, J., in the matter of Jacobs, one may be deprived of his liberty and his constitutional right thereto violated without the actual restraint of his person. Liberty, in its broad sense, as understood in this country, means the right not only of freedom from servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways; to live and work where he will; to earn his livelihood in any lawful calling, and to pursue any lawful trade or vocation."

People *vs.* Marx, 99 N. Y., 377; 52 Am. Rep., 34.

Massachusetts.

The legislature of Massachusetts passed an act forbidding an employer to impose a fine upon or to withhold wages from an employé for any imperfections in weaving. The supreme court held that said act was a violation of the constitutional provision which enumerated under the natural and inalienable rights of man the rights of acquiring, possessing, and protecting property. The court said: "The right to acquire, possess, and protect property includes the right to make reasonable contracts, which shall be under the protection of the law. The manufacture of cloth is an important industry and essential to the welfare of the community. There is no reason why men should not be permitted to engage in it; indeed, the statute before us recognizes it as a legitimate business into which anybody may freely enter. The right to employ weavers and to make proper contracts with them is therefore pro-
71 tected by our Constitution, and a statute which forbids the making of such contracts or attempts to nullify them or im-

pair the obligation of them violates fundamental principles of the rights which are expressly recognized in our Constitution."

MISSOURI.

An act was declared unconstitutional by the supreme court which provided that it should be unlawful for any person, firm, or corporation engaged in manufacturing or mining in this State to issue, pay out, or circulate for payment of the wages of labor any order check, memorandum, token, or evidence of indebtedness payable in whole or in part otherwise than in lawful money of the United States, unless the same was negotiable and redeemable at its face value without discount in cash or in goods, wares, or merchandise or supplies at the option of the holder. This act, however, was held to be unconstitutional because it was class legislation.

There subsequently came before the supreme court an act which provided that it should be unlawful for an employer to prohibit an employé from joining or to require an employé to withdraw from a trade or labor union or other lawful organization. This act was held to be in violation of that article of the Missouri constitution which declared that no one should be deprived of life, liberty, or property without due process of law and of said section 1 of the fourteenth amendment of the Constitution of the United States. The court said: "Here the law under review declares that to be a crime which consists alone in the exercise of a constitutional right, to wit, that of terminating a contract, one of the essential attributes of property, indeed property itself, under preceeding definitions. Brought to the bar of the court on such a charge, the accused would have been preju-ged in so far as the criminality of the act charged is concerned. No question could there be made or admitted as to the quality of the act. That would have been settled by the previous legislature declaration, and it would only remain to find the fact as charged in order to declare the guilt as charged; but the fact as charged, as already seen,
72 is not a crime and will not be a crime so long as constitutional guarantees and constitutional prohibitions are respected and enforced. If an owner obeys the law upon which this prosecution rests, he is thereby deprived of a right and liberty to contract or terminate a contract as all others may; if he disobeys it, then he is punished for the performance of an act wholly innocent, unless, indeed, the doing of such act guaranteed by the organic law, the right of the exercise of which the legislature is forbidden to deprive him, can by that body be conclusively pronounced criminal. We deny the power of the legislature to do this, to brand as an offense that which the constitution designates and declares to be a right, and therefore an innocent act, and consequently we hold that the statute which professes to exert such a power is nothing more nor less than a legislative judgment and an attempt to deprive all who are included within its terms of a constitutional right without due process of law."

State *vs.* Julow, 31 S. W. Rep., 781.

TENNESSEE.

The supreme court of this State has expressly recognized the fact that the right to make lawful contracts is protected by the Constitution.

By the act of 1895, chapter 128, all transfers of property to prefer creditors or that would have that effect, whether made by an insolvent or solvent debtor, were forbidden. The supreme court held this act unconstitutional, the court, through Judge Snodgrass, saying: "These general provisions in respect to the right to own property *equally protect the right to use, enjoy, exchange, and transmit it*, as held in the Morris case before referred to, and neither can be taken from the citizen by the arbitrary enactment of the legislature. That the citizen can be restrained from any improper use or improper disposition of his property is not doubted, and is, of course, not asserted here, but such is not the effect of this act, or if the purpose of the legislature was to accomplish this result, they
73 have attempted it by means of legislation beyond their power to adopt."

Bank *vs.* Divine Grocery Co., 13 Pickle, 603–'12.

INDIANA.

The case of Hancock *vs.* Yaden, 6 L. R. A., 576, has been more frequently cited as an authority to sustain the constitutionality of acts of this character than any other case. We have heretofore made extensive quotations from the opinion of the court in this case, from which it appears that the court based its decision *solely upon the ground that the statute whose constitutionality was sustained rendered void only such contracts as were entered into between the employer and employé before such relations existed, and the court clearly intimated that an act would be unconstitutional which would undertake to deprive the laborer of the right to voluntarily contract with his employer as to what he should receive in payment of wages after his services had been performed.*

This case is therefore strong authority against the constitutionality of the act in question, provided said act be construed to apply to the facts proven in the present case.

ARKANSAS.

It was enacted by the legislature that when any person or company engages in the operation or construction of a railroad or any contractor or subcontractor of such person or company should discharge an employé the wages of such employé should immediately become due.

One Leep was discharged by the St. Louis, Iron Mt. " Southern R. R. Co. on September 9th, 1890, and on the same day demanded of the company his unpaid wages, which were refused him. He brought suit and in the court below recovered judgment for the amount due, with the penalty provided by statute. On appeal the supreme court considered, in an elaborate review of the authorities,

the extent to which a legislature may interfere with the working of private contracts.

74 Among other things the court said: "When the subject of contract is purely and exclusively private, unaffected by any public interest or duty to persons, to society, or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract of controlling the terms."

Leep *vs.* St. Louis, Iron Mt. & So. R. C., 23 L. E. S., 264–270.

Said act was therefore held to be unconstitutional as to persons other than corporation-, but the court reached the conclusion that as *yo* corporations it was valid, in that — a constitutional provision the legislature was vested with authority to annul their charters, and said act operated only as a charter amendment.

Rhode Island.

In State *vs.* Brown & Sharpe Manufacturing Co., 17 L. R. A., 856, it was held that a statute requiring corporations to pay the wages of their employés weekly was not in conflict with the fourteenth amendment because, first, corporations were not embraced in the word "person" as used in said amendment; and, second, the legislature had the power to amend the charters of corporations of that State. On the first point the court was clearly wrong, as it has been repeatedly held, both by the Supreme Court of the United States and the courts of last resort of many States, that corporations are "persons" in the meaning of said section. See the many cases cited in note under Louisville Safety Vault & Trust Company *vs.* L. & N. R. Co., 14 L. R. A., 585.

Maryland.

In Shaffer *vs.* Union M. Co., 55 Md., 74, the court held a similar statute constitutional as to corporations on the ground that such an act was not an improper exercise of the legislative power to make charter amendments.

It thus appears that those courts which have sustained the validity of acts of this character have nearly always done so on

75 some g*f*ound which did not involve the power of the legislature to interfere with the right of individuals to voluntarily enter into contracts, as guaranteed by said fourteenth amendment.

It is hardly necessary to call the court's attention to the fact that the principles upon which the Arkansas, Rhode Island, and Maryland courts decided the above-cited cases have no application to the act in question in this case. In the first place, the act is made to apply to all persons, both natural and corporate, and under the authorities in this State the act cannot be held unconstitutional as to a part of the persons named therein, and valid as to the others; and second, defendant's charter was granted by a special act of the legislature, and no *power to amend the same was reserved therein.*

The Police Power.

Said chapter 11 of the Acts of 1899, *is* so construed as to include the facts proven in this case, does not fall with the police power inherent in every sovereign government.

The precise proposition to be here determined may be stated as follows: After an employé has performed services he voluntarily, without any constraint whatever upon the part of his employer, draws an order for coal in payment of such services, and presents the same to his employer, by whom it is accepted. Now, is an act of the legislature which purports to render void the contract thus made at the option of the holder of said order a valid exercise of the police power?

The result cannot be different, though many contracts are embraced in said act which are legitimately the subject of legislation. If it interferes with a single class of contracts, which are proper in themselves and are protected by the Constitution, then the act must fall as a whole.

Allgeyer *vs.* Louisiana, 165 U. S., 578.

76 Since the question is one arising under the Constitution of the United States, the decisions of the United States Supreme Court must be controlling. While the presumption is that legislative acts are constitutional and legislatures are allowed a reasonable discretion in determining what falls within their police powers, yet it has long been settled that "the legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the court."

Lawton *vs.* Steele, 152 U. S., 137, and decisions there cited.

We insist that the contract under consideration does not present a single element which has been considered by the courts as a justification of legislative interference.

In Yick Wo *vs.* Hopkins, 118 U. S., 356, the court held invalid an ordinance of San Francisco which made it unlawful for any one to carry on a laundry without the consent of a board of supervisors, except it be in a building constructed of brick or stone, and left it to the arbitrary will of said board to determine to whom such consent would be given.

In Allgeyer *vs.* Louisiana, 165 U. S., 578, the plaintiff in error was indicted for violating an act of the legislature which provided that "any firm, person, or corporation who shall fill up, sign, or issue in this State any certificate of insurance under an open marine policy or in any manner whatever does any act in this State to effect for himself or for another insurance on property then in this State in any marine insurance company which has not complied in all respects with the laws of this State shall be subject to a fine of one thousand dollars." It was proven that the plaintiff in error mailed to the Atlantic Insurance Company, a corporation domiciled in New York, a commu-

nication stating th-t insurance was wanted by him for $3,400.00 on 100 bales of cotton, which, at the time of the communication, were
77 in Louisiana. The supreme court of Louisiana held that such an act was a violation of the statute, and that said statute was a valid exercise of legislative power. The case having been removed to the Supreme Court of the United States, it was there held that the act under that construction was in violation of the fourteenth amendment. On the general subject of what rights are protected by that amendment, *on the general subject of what rights are protected by that amendment*, the court say: "The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contract- which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.

"It was said by Mr. Justice Bradley, in Butchers' Union Company *vs.* Crescent City Co., 111 U. S., 746 to 762, in the course of his concurring opinion in that case, that 'the right to follow any of the common avocation- of life is an inalienable right.'

"It was formulated as such under the phrase 'pursuit of happiness,' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen. Again, on page 764, the learned justice said, 'I hold that the liberty of pursuit, the right to follow any of the ordinary callings of life, is one of the privileges of the citizens of the United States.' And again, on page 765: 'But if it does not abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling and giving to others the exclusive
78 right of pursuing it, it certainly does deprive him (to a certain extent) of his liberty, for it takes from him the freedom of adopting and following the pursuit which he prefers, which, as already intimated, is a material part of the liberty of the citizen. It is true that these remarks were made in regard to questions of monopoly, but they well describe the rights which are covered by the word 'liberty,' as contained in the fourteenth amendment."

Allgeyer *vs.* Louisiana, 165 U. S., 589 & 590.

On March 30th, 1896, the legislature of Utah passed an act which provided that "the period of employment of workingmen in all underground mines or workings shall be eight hours per day, except in cases of emergency, where life or property is in em-inent danger."

One Holden, having been arrested under this statute for requiring one John Anderson to work ten hours each day, admitted that Anderson had worked the time alleged, but plead as a defence that

Anderson had voluntarily engaged his services for the number of hours per day alleged. The defendant was adjudged guilty by both the State courts and the Supreme Court of the United States, the latter court expressing the grounds upon which its decision rested as follows: "Upon the principles above stated, we think the act in question may be sustained as a valid exercise of the police power of the State. *The enactment does not profess to limit the hours of all workmen, but merely those who are employed in underground mines or in the smelting, reduction, or refining of ore or metals.* These employments, when too long performed, the legislature has adjudged to be detrimental to the health of the employés, and so long as there are reasonable grounds for believing that this is so its decision upon this subject cannot be reviewed by the Federal courts."

Holden *vs.* Hardy, 169 U. S., 366, 395.

In its opinion the court reaffirms that principle that the right to make proper contracts is protected by the fourteenth amendment, but, as appears from the above quotation, as well as from other portions of the opinion, holds this particular statute to be valid,
79 because *underground mining, when continuously pursued too long at time, is injurious to the health*, and it expressly declines to uphold all eight-hour laws.

While the courts have declined to law down any specific rule as to the extent of the police power, yet there are certain well-defined principles which have always been recognized. These principles are perhaps as accurately stated by Guthrie in his lectures on the fourteenth amendment, as elsewhere: "Any regulation of the internal affairs of the State, fairly subserving a valid police purpose and reasonably exercised for the benefit of the community at large, will be upheld; but if it be arbitrary and have no *substantial relations to the health, morals, peace, or welfare of the community, it will be nullified.*"

Guthrie's Fourteenth Amendment, page 76.

From the decisions cited by the author to support this proposition, as well as those heretofore referred to in this argument, it appearw that all contracts which do not improperly affect the *health, morals, peace, or welfare of the community* are within the protection of said amendment, and the court cannot consider whether the benefits of the act would be greater than its evils, or whether it renders void many classes of contracts that should be nullified. If the legislature desires to destroy contracts of that character, it must do so by statutes which do not infringe the constitutional rights of any individual. We confidently insist that the contracts relied upon by defendant as a bar to complainant's action are in no respect deleterious to the health, morals, peace, or welfare of the community, and that therefore they cannot be interfered with by the legislature.

IV.

Said act is also in conflict with the 8th section of the bill of rights of the constitution of Tennessee, which says: "That no man

shall be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers on the law of the land."

80 The argument in support of this contention is the same as that advanced under the foregoing head. The bill of rights guarantees to the individual practically the same property rights as those guaranteed by the fourteenth amendment of the *the* Constitution of the United States.

We therefore respectfully insist that the decree of the chancellor should be reversed and complainant's bill be dismissed.

LUCKY, SANFORD & FOWLER,
Solicitors for Defendant.

81 Filed October 12, 1899. J. G. Stuart, D. C.

In the Supreme Court.

SAM. HARBISON
vs.
KNOXVILLE IRON CO.

Reply Brief for Complainant.

Complainant begs leave to reply, upon his answer and brief hereto attached, to defendant's assignments of error filed in the court of chancery appeals. Complainant also further submits the following authorities in support of the contention made in his said brief:

Holden *vs.* Hardy, 169 U. S., page 366.
Orient Ins. Co. *vs.* Daggs, 172 U. S., page 557.
Railroad *vs.* Paul, 173 U. S., page 404.

82 Filed September 26th, 1899. Alex. McMillan, Clerk.

In the Court of Chancery Appeals.

SAM. HARBISON
vs.
KNOXVILLE IRON CO.

Answer to Assignments of Error and Brief for Complainant.

Statement of the case.

The pleadings in the cause are stated with substantial correctness in the defendant's assignments of error, and we do not deem it necessary to again state them here. The facts as shown by the record are as follows:

The Knoxville Iron Company is a corporation organized under the laws of Tennessee. It is engaged in mining and selling coal and in the manufacture and sale of iron. Its iron manufacturing plant is located in Knoxville. Its coal mines are in Anderson county, but it has a coal yard at its manufacturing plant in Knoxville, where it sells coal in connection with its iron business.

The defendant employs about 200 laborers at its manufacturing plant in Knoxville. Tr., p. 32. Its regular pay-day is on "the Saturday nearest the 20th day of the month." On this day, *and only on this day*, it will pay its laborers the amount of their wages, earned previous to the first day of the month, in cash. This always leaves unpaid the wages of employees earned between the first day of the month and the pay-day. Tr., pp. 32 & 39. It will not pay the cash except on its regular monthly pay-day, but in the meantime it will permit its laborers to take up all of the wages due to them in accepted coal orders.

83 It had the orders printed, ready to accommodate its laborers. It has by its rules set aside Saturday evening for the issuance of these *coal orders, and has notices posted about its plant that coal orders will be issued to its laborers for all wages due to them on each Saturday evening.* Tr., pp. 33, 36, 37.

Many of the employees have neither property or credit. They take up their wages in these coal orders and sell the orders to merchants for supplies, or to parties needing the coal, for money with which to buy family supplies. These orders are purchased at a heavy discount by coal dealers and by other manufacturers, and are redeemed by the defendant in coal. *All of these facts are well known to the defendant.* Tr., pp. 37 & 38. *The orders are issued when the laborer cannot get the cash for his wages, and only for wages already earned.* Tr., pp. 35, 36, & 39.

The secretary and treasurer of this company is asked the following question and makes the following reply:

"Q. In case that your employees presented these orders upon a regular pay-day, would you or would your company redeem them in cash?

A. We would if presented by the man who signed the order."

All of the orders sued on in this cause were issued and accepted by the defendant on its printed forms to its employees for coal at twelve cents per bushel. Tr., pp. 36 & 39. They were purchased by the complainant for cash, at an average of 85 cents on the dollar, from the laborers to whom the orders were issued by the defendant. Tr., pp. 44 & 45. The laborers taking these orders, however, sell them to other parties at a much greater discount. Tr., p. 44.

The complainant presented all of these orders to the defendant within thirty days after their acceptance by the company, and on one of its regular pay-days, and demanded payment thereof in cash. Defendant's ans., Tr., p. 31. Payment was refused.

Thereupon this suit was brought to recover the value of the wages of the defendant's employees, represented by the orders which had been purchased by the complainant.

84 The chancellor decreed that complainant was entitled to the relief sought by him, and gave him a decree for the aggregate amount of the employees' wages represented by said orders, with interest from the filing of the bill. The defendant has appealed and assigned errors.

Answer to Errors Assigned.

I.

The defendant in its first assignment of error insists that its method of paying its laborers wages in coal is not within nor governed by the provisions of chapter 12 of the Acts of 1899. Section 1 of this act provides:

"That all persons, firms, corporations, and companies using coupons, script, punch-outs, store orders, or other evidence of indebtedness to pay their or its laborers and employees, for labor or otherwise, *shall, if demanded*, redeem the same in the hands of such laborer, employee, or *bona fide holder in good and* lawful money of the United States," provided they are presented for payment on one of the company's regular pay-days.

The evidence shows that the defendant *uses* and, in the language of defendant's brief, "is accustomed to use" the accepted orders sued on "as its usual means of paying for labor" or paying the wages of its employees between what it calls its regular monthly pay-days. The defendant has only one day in the month when it will pay its employees in cash, but by its rules every Saturday afternoon is a "pay-day." It has notices posted about its works that it will pay in coal on each Saturday afternoon. Tr., p. 40.

It sells three grades of coal, but its laborers are always paid in the highest and most expensive grade. The orders are all for coal at twelve cents per bushel. It is insisted that the laborers need not take the coal orders unless they elect to do so, and that the taking of these orders is voluntary upon the part of the laborers and constitutes a voluntary contract between the parties.

85 The proof show- that they must take the coal orders or starve until the monthly pay-day. The defendant knows and has known for years that its employees took coal orders and sold them to obtain the necessities of life. Tr., p. 37. Its cash pay-days are put so far apart as to require the laborers to take the coal orders. The laborers do not accept these orders voluntarily, as averred by the defendant. *They take them because they cannot get the money*, and they are dependent upon their labor for food and supplies.

The "*cash*" pay-days are purposely set so far apart as to require laborers to accept these orders. The witness Brown says that this is not true; that the laborers are paid by the ton, and cannot conveniently be paid oftener than once a month. Yet in the same breath he says that on each Saturday the laborer may receive his week's wages in coal orders. Why is it they cannot just as "conveniently" pay them in cash? The secretary and treasurer, according to this own story, knows just what is due to each laborer on Saturday evening, and devotes the time from one to five o'clock p. m. on that day to the issuance of these coal orders. Tr., p. 37.

This act was passed to remedy this very evil. If the method of payment adopted by this defendant is not prohibited by the statute, the statute is nugatory and a dead letter.

The act does not in terms prohibit the issuance of these orders by the defendant nor their acceptance by the employee, but, in order to prevent the very evil that is shown in this case, it provides that at the defendant's regular pay-day, *if demanded*, the defendant shall take up the unused orders in cash, whether they are still in the hands of the employee or have been honestly acquired and are then owned by another.

The defendant's rule that it will only pay its laborers *wages once a month in cash*, but that it will pay them in accepted coal orders, which are transferable by mere delivery, at the end of each week, requires the employees, in obtaining family supplies, to sell the defendant's coal, and that, too, at a loss to the laborers. The
86 custom of defendant has been to pay these orders in coal to the holders of them. If this act is valid and enforcible, it will have the effect to cause the defendant to make its weekly payments in cash, or at any rate *will enable the employees to sell the orders at a very small discount.*

The authorities cited by the defendant under this assignment of error are in point. These cases turn upon a proper construction of the peculiar acts there under consideration. There cannot be any doubt as to the meaning of our act of 1899.

It is clear that the orders sued on are covered by the act, and that the complainant is entitled to have them paid in cash. The act covers all cases where the scrip or orders are used, "To pay their or its laborers and employees for labor or otherwise." It is not the custom to pay for labor before it is performed. These orders were used to pay the wages earned by defendant's employees.

II.

Is the complainant a *bona fide* holder of said orders within the meaning of the statute? This question is raised by the second assignment of error.

"A purchaser *bona fide* is one who actually purchases in good faith."

2nd Kent's Com., p. 502.

The clause *bona fides* means good faith or honestly, as distinguished from *mala fides* or bad faith.

The literal meaning of *bona fides* is "in good faith."

Bouv. Law Dic., vol. 1, p. 211.

It is not denied that the complainant is the owner of the orders sued on, and that he obtained them honestly. He bought them in the open market and paid for them more than the average market price. This we submit is all that the statute requires. It does not make any difference what he paid for the orders, if in purchasing them he practiced no fraud or deception.

It is said in defendant's brief that the legislature intended the act to enure to the benefit of the laborer and not to the usurer,
87 and that it should be so construed as to correct existing evils and not to create other evils equally or more pernicious. I

answer to this, we say that as soon as the defendant knows that these coal orders must be redeemed in cash, its employees will no longer be required to take them, and its cash pay-days will be fixed at the end of each week. When it is known certainly that these orders must be redeemed in cash the employees will be able to dispose of them at a very small discount, and the object of the legislature, about which the defendant seems to be so solicitous, will be accomplished.

It is further said in defendant's brief that before the act was passed the man who desired to buy his winter's coal got the advantage of the discount, and that if plaintiff's interpretation of the act is correct "the usurer, the man who fattens by his fellowman's misfortunes and straightened circumstances, obtains the advantage."

Be this as it may, it seems to us that the defendant has fattened long enough by the resulting benefit to itself in forcing these orders upon its employees; but, as we have said, if the law is settled that the defendant must redeem these orders in cash, no one will obtain the advantage on these orders, neither the usurer or the defendant, but the laborer will obtain the benefit of his labor, and the rule that "the laborer is worthy of his hire" will be the law of the land.

It is further insisted that at any rate the defendant is only required to pay to the complainant what complainant paid for the orders.

The second section of the act settles this question. In the latter part of the second section it is provided as follows:

"Such redemption to be at the face value of such scrip, punchouts, coupons, store orders, or other evidences of indebtedness; provided further said face value shall be in cash, the same as its purchasing power in goods, wares and merchandise at the commissary company store or other repository of such company, firm, person or corporation aforesaid."

88 III.

By the third and last assignment of error it is claimed that the act of 1899, chapter 11, is unconstitutional, as being in contravention of section 1 of the fourteenth amendment of the Constitution of the United States, — says: "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law." Article eight of section one of the constitution of Tennessee embodies substantially the same provisions that are contained in section one of the fourteenth amendment of the Federal Constitution and is as follows:

"That no man shall be taken or imprisoned or disseized of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his liberty or property but by the judgment of his peers or the law of the land."

These provisions of the State and Federal constitutions have been construed, in a great number of cases, by our supreme court. When

the act under consideration is viewed in the light of the proper construction of these constitutional provisions, as announced by our supreme court, it is clear that it does not contravene the section of the Constitution of the United States relied upon by defendant.

It is said by defendant that the act of 1899 is a general prohibition against entering into contracts having as their object the acquisition of property, and that therefore this act is legally invalid.

The act of 1899 does not *prohibit defendant from using the coupons, scrip, punchouts, or orders in paying its laborers, and it does not prohibit the acceptance of the orders, etc., by the laborers in payment of their wages. In this important particular the act of* 1899 *is different from all of the acts that were held unconstitutional in the cases cited by the defendant.* It does provides, however, that at the defendant's regular pay-day, if *demanded*, the defendant shall take up the
89 unused orders in cash, whether they are still in hands of the employee or have been honestly acquired and are then owned by another.

The legislature intended to correct the very evil that is shown in this cause, which is oppressive and detrimental to the public interest, without interfering unreasonably with the free right of the employer and employee to contract with each other, and the right on the part of the employer to sell its property, and of the employee to dispose of his wages.

It is clear that the legislature did not intend to and that the act does not interfere with any proper and legitimate dealings or contracts between the employers and employee. Its object is to protect the weak against imposition by the strong. The employer may give and the employee may receive these orders in payment of wages; but if they are used under the guise of fair dealing to impose upon the laborer, the employer must redeem them in cash, and thereby pay for the services received by him from his employees. This *regulation* of the contract between employer and employee simply prevents the employer from improperly coercing the employee, to the gain of the one and the detriment of the other, into accepting orders or punchouts which he does not need or cannot use in obtaining supplies.

The objection made by the defendant to this act, as we understand it, rests on the theory that the legislature, in thus regulating the right of the employer to make contracts with the employee, is guilty of impertinent intermeddling with private contracts, with which the public has no concern and over which it has no control.

This same defence was made in the case of Duggar *vs.* Insurance Co., reported in 11 Pickle, page 247, where the following act was attacked as contravening the sections of the constitution relied upon here, to wit:

"Be it enacted by the General Assembly of the State of Tennessee, That insurance companies shall pay their policy-holders the full amount of loss sustained upon property insured by them:
90 Provided, said amount of loss does not exceed the amount of insurance expressed in the policy, *and all stipulations in such policies to the contrary are and shall be null and void; Provided*, how-

ever, that insurance policies upon cotton in bales shall not be subject to the provisions of this act."

The contract made between Dugger and the insurance company in violation of this statute was as follows:

"It is a part of the consideration of this policy, and the basis upon which the rate of premium is fixed, that in event of *loss this company shall not be liable for an amount greater than three-fourths of the actual cash value of the property covered by this policy at the time of such loss," etc.*

It will be readily seen that if the act of the legislature above quoted was valid and enforcible, the contract above quoted was void under it. The complainant in that cause insisted that said part of the contract was void under that act, and that he was entitled to recover the full value of the property destroyed, where such value did not exceed the amount of the insurance policy. The defendant insisted that the act was unconstitutional because *it abridged the right of the complainant and defendant to make a free and voluntary contract in regard to this matter; and, further, because the complainant waived the benefit of the act by accepting the policy with this stipulation embodied in it.* Our supreme court held that the act was constitutional, and that said contract was invalid.

In deciding this case Judge Beard, speaking for the supreme court, and reviewing the cases previously decided by that court on the constitutionality of such acts, says:

"The right to acquire and possess property necessarily includes the right to contract. Leep *vs.* St. Louis R'y Co., 58 Ark., 407 (S.C., 41 Am. St. Rep., 100). This right of contract inheres in property, and in connection with its possession and use forms its chief element of value. It is only by contract that its ownership can be acquired or transferred; and it is certainly true that if the legislature
91 should undertake to provide that a man or any class of men, however general, should neither alienate property already acquired nor make contracts looking to the acquisition of more or other kinds of property, or that the citizens of the State, in whole or in part, should not have the capacity to enter into any agreements with regard to their own services or employment, such an act would 'transcend the due bounds of legislative power, even though no express constitutional provision could be pointed out with which it would come in conflict.' Cooley Con. Lim., 6 ed., p. 484. *While this is unquestionably true, yet it is also certain that this right is not unlimited. The right of contracting with regard to one's own is subject to legislative control and conditions. The reports of our own State, as well as of our sister States, and of the Supreme Court of the United States, furnish cases in abundance illustrative of this last proposition.*

Without stopping to point out statutes like those forbidding the owner to sell his 'unwholesome fish or flesh' or 'bread made from unwholesome flour,' or 'adulterated spirit-ous liquors,' or from delivering to a purchaser a poisonous drug without first labelling it as poison (M. & V. Code, sec. 5632), all of which are maintained upon the ground of being within the limits of the police power of

the State, *we will call attention to the clear recognition of this court of the right to place limitations on personal contracts*, as found, among others, in the cases of Transportation Co. *vs.* Bloch, 86 Tenn., 392, and Mann *vs.* Western Union Tel. Co., 85 Tenn., 529, where it was held that the corporations could not contract for exemption from liability for the negligence of their employees. It is true these decisions rest upon the theory that upon the railroad and telegraph a public use is impressed which of itself sanctions legislative interference; *but we are by no means restricted to cases of this class.* In 1849-'50 the legislature passed an act, among other things providing that the husband shall not 'sell his wife's real estate during her natural life without joining her in the conveyance,' and again,
in 1879, enacted that he should not contract 'away the rents
92 and profits of his wife's land except by her consent obtained
in writing' (M. & V., secs. 3338, 3343); *and though these acts of restrictions* were in the face of the husband's right at common law to unlimitedly dispose of both, yet their wisdom and constitutionality have been maintained by this court. Coleman *vs.* Satterfield, 2nd Head., 264; Taylor *vs.* Taylor, 12 Lea, 490.

In Truss *vs.* State, 13 Lea, 311, notwithstanding a- owner's common-law right to sell and deliver his property at any hour, whether of the night or day, he may choose, yet this court held an act to be constitutional which made it unlawful to sell or to buy loose cotton between sunset and sunrise; and at the present term of the court, upon the ground of public policy, we have held void a stipulation in a promissory note by which the maker obligated himself to waive the benefit of the exemption laws in the event judgment was taken on it, and an execution was issued on this judgment.

Upon the same ground the court declined to enforce contracts with married women and minors where minority or coverture is relied on as a defense; and the right of the State to pass general statutes regulating contracts, such as the statute of frauds, has ever been called in question. Illustrations of this principle might be indefinitely multiplied by going to the reports outside of the State. We will content ourselves with referring to a few cases involving statutes like the one in question, and in which there seems not to have arisen a suspicion in the minds of counsel or of the courts that these statutes infringed on either the United States or the States constitutions."

"Without further elaboration of this point, we are content to add that the act of 1893 does not violate either of the constitutional provisions quoted above."

Dugger *vs.* Insurance Company, 11 Pick., 252-'3-'4-'5 & '7.

In March, 1879, the legislature passed an act to *ph*ohibit speculation in witness fees and other fees originating in courts. The
first section of this act reads as follows:
93 "It is hereby declared to be a misdemeanor for any person
in this State either by himself or through an agent to purchase, contract for, or otherwise speculate in fees due to witnesses for attendance as such in said courts, or to buy or speculate in any

other fees for services rendered by third persons in said courts for less than their face value, provided that the provisions of this bill shall not apply to witnesses' fees traded for merchandise or hotel bills. Acts of 1879, chap. 210, sec. 1."

One Davis was indicted and convicted for violating the provisions of this statute. He appealed to the supreme court and there attacked the act as unconstitutional upon the ground that it was a restraint upon the free disposition by the witness of the fees as property and *pro tanto* a deprivation of an element of property.

The supreme court held this act constitutional, and in discussing the constitutionality of the act it says:

"The act under consideration was intended to prevent speculation in witness fees. It makes the purchase of such fees for less than their face value a misdemeanor, but, it is added, the provisions of the act shall not apply to witness fees traded for merchandise or hotel bills. The proviso does not authorize merchants and hotel keepers to speculate in the fees. It would be as much a misdemeanor for an individual in these cases to do so as though any other member of the community. The meaning of the proviso is that the transfer of the fees for food and lodging or for goods in the ordinary course of trade shall not be deemed speculating in them within the meaning of the act. The legislature intended to break up a particular kind of speculation in these fees which it thought detrimental to the public interest without interfering unreasonably with the witnesses' right of using the fees in the ordinary course of business. Of the wisdom of the legislation, the law-making power is the exclusive judge. Our duty is to enforce it if not violative of the organic law." Davis *vs.* State, 3 Lea, 381.

94 The act of 1899 is also clearly constitutional under the police power of the State. Mr. Cooley, in his work on constitutional limitations, defines the police power of the State as follows:

"The police of a State, in a comprehensive sense, embraces its whole system of internal regulation, by which the State seeks not only to preserve the public order and prevent offences against the State, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as is reasonably consistent with a like enjoyment of rights by others."

Cooley Con. Lim., p. 704.

"If the power extends only to a just regulation of rights with a view to the due protection and enjoyment of all, and does not deprive any one of that which is justly and properly his own, it is obvious that its possession by the State and its exercise for the regulation of the property and actions of its citizens cannot well constitute and invasion of national jurisdiction or afford a basis for an appeal to the protection of the national authorities."

Cooley Con. Lim., p. 707.

It is sufficient for us to have pointed out that, in addition to the power to punish misdemeanors and felonies, the State has also the authority to make extensive and varied regulations as to the time, mode, and circumstances in and under which parties shall assert, enjoy, or exercise their rights without coming in conflict with any of those constitutional principles which are established for the protection of private rights or private property.

Id., 745–'6.

Speaking more particularly of the right of a State to regulate contracts between its citizens, Mr. Cooley says:

"All contracts and all rights, it is declared, are subject to this power, and not only may regulations which affect them be
95 established by the State, but all such regulations must be subject to change from time to time as the general well-being of the community may require or as the circumstances may change or as experience may demonstrate the necessity."

Id., 708.

"No special privileges are conferred nor any unjust discrimination made by a statute requiring all persons, firms, corporations, etc., engaged in mining or manufacturing to pay their employees at least once every two weeks, and *pho*hibiting all contracts by such employees to accept anything but lawful money of the United States in payment. The statute operates alike upon all who enter the classes named and leaves all citizens free to enter them.

Hancock *vs.* Yaden, Sp. Ct. Ind. Rep., 6 L. R. A., 576.

Courts indulge every reasonable intendment favorable to the constitutionality of a statute passed with the required formalities. Statutes upon trial for unconstitutionality are entitled to the benefit of every reasonable doubt."

Cole Mfg. Co. *vs.* Falls, 90 Tenn., 466.

Dugger *vs.* Ins. Co., 95 Tenn., 245.

The defendant insists that by the acceptances of the coal orders in question by the employees and the purchase of the orders by the complainant, which are payable on their faces in coal alone, they are estopped to ask payment in anything but coal, and that the action of the employee and the complainant in this regard is a waiver of the benefit of the statute.

The statutory provision annuls this obnoxious agreement, if any such was made, and the statute is as much a part of these coal orders as if it was written into their faces. It expressly provides that said orders shall be paid in cash, whether in the hands of the employees or of a *bona fide* purchaser from him.

Dugger *vs.* Ins. Co., 11 Pick., 261.

We submit, therefore, that there is no error in the decree of the chancellor, and that the same should be affirmed.

GREEN & SHIELDS,
Sol's for Complainant.

96 SAM. HARBISON *vs.* KNOXVILLE IRON COMPANY. } Opinion.

The pleadings and proof make the following case:

The defendant is a corporation chartered under chapter 57, Acts of 1867–'8. The following powers are given by section 4: "To purchase, hold and dispose of such real estate, not to exceed seventy thousand acres, leases, mines, minerals, iron, coal, oil, salt and personal property, as they may desire, or as they may deem necessary for the legitimate transaction of their business; to mine, bore, forge, smelt, work and manufacture, transport, refine and vend the same. The company to have and enjoy, and exercise, all the rights, privileges and powers belonging to, or incidental to corporations, which may be convenient to carry out any business they are in this act authorized to engage in."

The defendant has its principal office at Knoxville, where it is engaged in the manufacture of iron. As an incident to this business, it also mines and sells coal. Its mines are located in Anderson county. It works about two hundred employees. It has now and has had for many years a regular pay-day, being that Saturday in every month which is nearest the 20th day of the month. Upon this pay-day each employee is paid in cash the amount then due him, excepting what may be due him from the first of the month up to said pay-day—that is, the company keeps in arrears with its employees all the time to the extent of their wages for about twenty days' time, so far as concerns the matter of cash payments, but they may collect this sum and all sums that may be due them in coal orders, as stated below. It does not and will not pay cash to its employees for wages at any other time than upon said regu-
97 lar pay-days. Defendant, however, nearly always has on hand in its Knoxville yard a large amount of coal which it sells to all persons who are willing to purchase, whether such persons are its laborers or the public generally. For some time prior to the filing of the bill and at the time the bill was filed the defendant was and had been accustomed to accept from its laborers after work had been performed orders for coal in the following form:

"Let bearer have — bushels of coal, and charge to my account."

—— ——.

The defendant's employés are accustomed to sign orders, and in this form they are accepted by a stamp, in these words:

"Accepted —— —, 1899.

KNOXVILLE IRON COMPANY."

Many of defendant's employees have never drawn an order on the defendant, and many others have used them only in the purchase of coal for themselves; but the defendant in this way pays off about seventy-five per cent. of the wages earned by its employees. Many of the employés who draw these orders get small wages, ninety cents to one dollar and twenty cents per day, and sell these orders to get money to live on, but those who get the largest wages, $65 to

$175 per month, draw more of such coal orders in proportion than do those who get small wages. Defendant has never insisted upon any of its laborers giving any such orders, but has been willing to accept such orders when any employé would draw them and ask their acceptance. Defendant, however, sets apart every Saturday afternoon, from one o'clock to five o'clock, for the acceptance of such orders. It makes some profit in accepting said orders in that, instead of paying the wages of its employees in cash, it pays them in coal at 12 cts. per bushel, and also, to some extent, its coal business is increased thereby. On the other hand, such orders are a convenience to the defendant's employees in the way of enabling them to realize on their wages before the regular monthly pay-day and up to that pay-day. When these orders are drawn by defendant's employees and accepted, defendant credits itself with said orders on its accounts with the persons so drawing them at the rate of twelve cents per bushel for the amount of coal called for by said orders. There is no proof of an express agreement between the
98 defendant and its employees that the orders should be paid only in coal, unless the face of the orders shall be construed as setting forth such an agreement. The only proof of any implied agreement to that effect is to be found in such inferences as may be drawn from the face of the orders and from the custom of the company to issue them and of the employés to receive them on other than the regular cash pay-days, and the fact that no employé has ever presented one of such orders for redemption in anything else than coal. There is no proof of any compulsion on the part of the defendant upon its operatives, except in so far as compulsion may be implied from the fact that unless defendant's operatives take their wages in coal orders they must always on each monthly pay-day suffer the defendant to be in arrears about twenty days—that is, that on the regular pay-days on that Saturday which is nearest the 20th of the month the defendant will not pay wages, except up to the last day of the preceding month, but will pay in coal orders the whole wages due at the end of each week, and that such is the course of business between the defendant and its employees. The complainant purchased six hundred and fourteen of said accepted orders from defendant's employees, and within thirty days from the issuance of each of said orders he presented each of them to The Knoxville Iron Company, defendant hereto, and demanded that it redeem them in cash, which was refused by defendant. Complainant is a licensed dealer in securities and sent his agents among the employés of the defendant to buy these coal orders. They had previously been selling at seventy-five cents on the dollar—that is, before the passage of chapter 11, Acts of 1899—but he instructed his agents to give 85 cents on the dollar, and the orders now in suit were purchased at that price. They amount in dollars and cents to $1,678. There is no evidence of bad faith on the part of the complainants in the purchase of said orders.

Upon refusal by the defendant to pay this sum in cash complainant brought the present bill to recover this amount. The defendant answered, denying its liability to pay cash, but admitted its liability

to pay in coal, and averred its willingness to pay its employés in cash upon presentation of coal orders, but not any assignee, disclaiming, however, that it owed any legal duty to pay cash on said orders to its employés even, or anything else but coal. The answer also insisted that complainant was not a *bona fide* holder of said orders.

The facts above found are drawn from the pleadings and proof. The chancellor found on behalf of the complainant and rendered judgment for $1,678 principal and $24.66 interest, making a total of $1,702.77.

The defendant prayed and was granted an appeal, and has
99 assigned errors.

The act under which this suit is brought (chapter 11, Acts of 1899) contains the following provisions:

"SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations and companies using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay their or its laborers and employés, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employé or *bona fide* holder in good and lawful money of the United States: Provided, the same is presented and redemption demanded of such person, firm, company or corporation using same as aforesaid, at a regular pay-day of such person, firm, company or corporation to laborers or employés, or if presented and redemption demanded as aforesaid by such laborers, employés or *bona fide* holders at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order or other evidences of indebtedness to such employés, laborers or *bona fide* holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidences of indebtedness: Provided, further, said face value shall be in cash the same as its purchasing power in goods, wares and merchandise at the commissary company store or other depository of such company, firm, person or corporation aforesaid.

"SEC. 2. Be it further enacted, That any employé, laborer, or *bona fide* holder referred to in section 1 of this act, upon presentation and demand for redemption of said scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in section 1 of this act."

It is first insisted by the defendant that the coal orders
100 referred to in the statement of facts do not come within the scope of this act. We do not think this contention is well taken.

It is next insisted that the complainant is not a *bona fide* holder.

We think he was a *bona fide* holder within the sense and meaning of the act quoted. This contention is therefore overruled.

It is next insisted in defendant's brief and assignment of errors that if these coal orders fall within the meaning of the statute, then that the statute itself is void as being in conflict with section 1 of the 14th amendment to the Constitution of the United States, which, so far as necessary to quote, reads: "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law." It is also insisted that it is in conflict with the 8th section of the bill of rights of the constitution of this State, which reads upon this point: "No man shall be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed, or deprived of his life, liberty or property but by the judgment of his peers or the law of the land."

The substance of the contention upon this point is that the act is an unwarrantable interference of the State with the liberty of contract which belongs to all citizens of the United States and of the State of Tennessee.

In support of this contention we are referred to numerous authorities. But before considering the authorities which are supposed to bear especially on the point it is proper to cite and quote certain statements contained in the opinions of eminent judges, which are supposed to bear upon the matter in the way of showing its connection with or how it falls within the category of subjects that are proper to be considered under the constitutional provisions above mentioned. We are referred to the following general statement contained in the dissenting opinion of Mr. Justice Swayne in the Slaughter-house cases, 16 Wall., 127: "Property is anything which has an exchangable value, and
101 the right of property includes the right to dispose of it according to the will of the owner. Labor is property, and as such merits protection. The right to make it available is next in importance to the right of life and liberty. It lies, to a large extent, at the foundation of most other forms of property." And again: "As the possession of property of which a person cannot be deprived doubtless implies that such property may be acquired, it is safe to say that a State law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision. Indeed, we may go a step further and say that as property can only be legally acquired by contract, a general prohibition against entering into contracts with respect to property or having as their object the acquisition of property would be equally invalid." Mr. Justice Brown in Holden v. Hardy, 169 U. S., 391. Also the following: "The liberty mentioned in that amendment" (the 14th) "means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all of his faculties; to be free to use them in all lawful ways; to live and work where

he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned." Mr. Justice Peckham in Allegeyer *v.* Louisiana, 165 U. S., 589.

We are also referred to the following authorities as sustaining the proposition that the property and privileges of corporations are embraced within this amendment equally with those of other persons: Santa Clara Company *vs.* Sou. Pac. R., 118 U. S., 394; Minneapolis R'y Co. *vs.* Beckwith, 129 U. S., 26; Dugger *vs.* Ins. Co., 11 Pick., 250.

102 We are referred to the following authorities as directly on the point that such statutes as the one we now have under consideration are void under the fourteenth amendment: Frorer *vs.* People, 16 L. R. A. (Ill.), 492; Ramsey *v.* People (Ill.), 17 L. R. A., 853; Braceville Coal Co. *vs.* People (Ill.), 22 L. R. A., 340; Harding *vs.* People (Ill.), 32 L. R. A., 445; State *v.* Fire Creek Coal Co. (W. Va.), 6 L. R. A., 359; State *v.* Goodwill (W. Va.), 6 L. R. A., 621; State *v.* Julew (Mo.), 31 S. W. R., 781. But all of these cases went off upon the point that the statutes under consideration were partial laws applying to special kinds of business and not to all persons and corporations similarly situated with regard to the matter in hand. The present act is general, and hence these authorities do not apply.

We are also referred to *In re* Jacobs, 98 N. Y., 98; 50 Am. Rep., 636, and People *vs.* Marx, 99 N. Y., 377; 52 Am. Rep., 34. The point in decision in the first was whether an act forbidding the making of cigars in tenement-houses of a certain kind was a constitutional exercise of the police power or merely an oppressive interference with a lawful business under the guise of the police power; and the question discussed in the second case was whether a statute forbidding the manufacture of oleomargarine was unconstitutional.

We are referred to Leep *vs.* St. Louis, Iron Mt. & Co. R'y Co. (Ark.), 23 L. R. A., 264–270, and State *vs.* Brown & Sharp Mfg. Co. (R. I.), 17 L. R. A., 856; but these cases were decided upon the theory that the acts in question amended the charters of certain corporations under a power reserved to the legislature.

We are also referred to Bank *v.* Divine Grocery Co., 13 Pick., 603–612; but this case upon the point referred to concerned the right of a solvent owner to dispose of property without legislative interference for the payment of any debt he might owe, and only collaterally bears upon the question we have under consideration.

All of the cases above referred to, however, contain useful remarks thrown out by the judges in the course of general discussion, but such remarks are not authority.

We are also referred to several Pennsylvania cases, and
103 also to one Maryland case, but, as these are not accessible to the court, we need not make further mention of them.

The authorities cited which come nearest the question are Massachusetts *vs.* Perry (Mass.), 19 L. R. A., 325; *Re* House Bill No. 1230

(Mass.), 28 L. R. A., 300; Ritchie *vs.* The People (Ill.), 29 L. R. A., 79; Hancock *v.* Yaden (Ind.), 6 L. R. A., 576; Peel Splint Coal Company *vs.* The State (W. Va.), 17 L. R. A., 385.

In Massachusetts *v.* Perry the statute under consideration was as follows: "No employer shall impose a fine upon or withhold the wages or any part of the wages of an employé engaged at weaving for imperfections that may arise during the process of weaving." Section 2 provided penalties. The court held that this statute was unconstitutional, on the ground that it was an attempt to compel payment under a contract of the price for good work when only inferior work was done. It was said that the right to acquire, possess, and protect property included the right to make reasonable contracts, which should be under the protection of the law, and that if the statute should be held to permit the hiring of weavers only upon terms that prompt payment should be made for the price of good work however badly that work might be done, and that the remedy of the employer for their derelictions should only be by suits against them for damages, it was an interference with the right to make reasonable and proper contracts in conducting a legitimate business, which it was stated the Constitution guaranteed to every one. There was a dissenting opinion by Mr. Justice Holmes, who said:

"I suppose this act was passed because the operatives or some of them thought that they were often cheated out of a part of their wages under a false pretense that the work done by them was imperfect, and persuaded the legislature that their view was true. If their view was true I cannot doubt that the legislature could deprive
104 the employers of an honest tool which they were using for a dishonest purpose, and I cannot pronounce the legislation void, as based on a false assumption, since I know nothing about the matter one way or the other. The statute, however construed, leaves the employers their remedy for imperfect work by action. The objection that this remedy is practically worthless is, I apprehend, no less true, although for different reasons, if the workman's wages should be detained unjustly."

Re House Bill Number 1230 was a case wherein the supreme judicial court of Massachusetts, under a law of that State, was asked by the legislature the following question: "Is it within the constitutional power of the legislature to extend the application of the present law, relative to the weekly payment of wages by corporations to private individuals and partnerships, as provided in the bill entitled 'An act relative to the weekly payment of wages,' now pending before the general court?" The court answered the question in the affirmative. Upon the subject of limiting the right of contract the court used this language: "There never has been, at any time, in Massachusetts an absolute right in its inhabitants to make all such contracts as they pleased. Some contracts have always been held void at common law and some contracts valid at common law have been declared void by statute. Married women at common law were under a general disability to make contracts during cove-ture; and although they have recently been empowered by the

statutes to make contracts as if they were unmarried, still at the present time husband and wife cannot make contracts with each other; and if the statutes were repealed, the powers of married women to make contracts would be governed by the common law. Marriage-brokage and post-obit bonds and covenants in restraint of trade sometimes have been held void. Minors at common law are under a disability to make contracts except for necessaries, and this is said to be for their protection. Our statute of fraud prevents the enforcement in the courts of many
105 kinds of contract, unless they are shown by a writing, and prohibits the making of certain contracts, and this statute was passed for the protection of persons against fraud and perjury. Seaman have sometimes been regarded as a class of persons who could not be trusted to make their own contracts without supervision, and statutes have been passed making regulations concerning their wages and shipping contracts. U. S. Rev. Stat., title 53. Wages to a certain amount, due for personal labor and service, have been exempt from attachment, probably on the ground that it was thought that workmen generally need their wages for their support. Usury laws furnish, perhaps, the best known illustration of the regulation by statute of the price to be paid for the use of a commodity, but the validity of these laws usually has been regarded as an exception to the general rule. Mass. Rev. Stat., title 12, entitled 'Of the regulation of trade in certain cases,' shows various forms of interference by the legislature with what may be called the freedom of trade or of contracts concerning the sale of commodities. The regulation of the subject of fire insurance, and the prohibition of the sale of oleomargarine made in imitation of yellow butter, and the requirement that an agreement to make a will must be in writing are some of the most recent instances in Massachusetts of the prohibition or regulation of contracts by statute. The constitutionality of much of this legislation never has been questioned, and, when questioned, it generally has been sustained. * * * The decisions of various courts of this country upon the authority of the legislature of a State to prescribe rates for transportation by railroad companies, and, in some instances, for the use of elevators, have proceeded on the ground that these were public employments; and it is implied in all or nearly all of these decisions that the legislature could not constitutionally prescribe the rates of compensation to be paid for services or for the use of property in exclusively private employments. It is manifest, however, from the examples we have given, that the regulation of contracts by statute,
106 not amounting to a determination of rates or prices, has not been confined to public employments or to business which may be said to be affected with a distinct public interest. The legislation on this subject relates to a great variety of contracts, and has been passed, some of it to promote the public health or the public morals or the public convenience, some of it for the protection of individuals against fraud, and some of it for the protection of classes of individuals against unfair or unconscionable dealing."

In Ritchie *v.* The People the section of the statute that was under

examination was as follows: "No female shall be employed in any factory or workshop more than eight hours in one day or forty-eight hours in any one week." This was held unconstitutional on two grounds: First, that it was partial and discriminative, and, secondly, because it was an undue interference with the right to make contracts. Upon the latter point the court said: "But, aside from its partial and discriminating character, this enactment is a purely arbitrary restriction upon the fundamental right of the citizen to control his or her own time and faculties. It substitutes the judgment of the legislature for the judgment of the employer and employé in a matter about which they are competent to agree with each other. It assumes to dictate to what extent the capacity to labor may be exercised by the employé and takes away the right of private judgment as to the amount and duration of the labor to be put forth in a specified period. Where the legislature thus undertakes to impose an unreasonable and unnecessary burden upon any one citizen or class of citizens it transcends the authority entrusted to it by the Constitution, even though it imposes the same burden upon all other citizens or classes of citizens. A distinguished writer upon constitutional limitations has said that general rules may sometimes be as obnoxious as special, if they operate to deprive individual citizens of vested rights, and that while every man has a right to require that his own controversies shall be judged by the same rules
107 which are applied in the controversies of his neighbors, the whole community is also entitled at all times to demand the protection of the ancient principles which shield private rights against arbitrary interference, even though such interference may be under a rule impartial in its operation. Cooley, Const. Lim., 5th ed., top p. 424; Bank of Columbia *v.* Okely, 17 U. S.; 4 Wheat., 235. Section 1 of article 2 of the constitution of Illinois provides as follows: 'All men are by nature free and independent and have certain inherent and inalienable rights. Among these are life, liberty, and the pursuit of happiness. To secure these rights and the protection of property governments are instituted among men, deriving their just powers from the consent of the governed.' Liberty, as has already been stated, includes the right to make contracts, as well with reference to the amount and duration of labor to be performed as concerning any other lawful matter. Hence the right to make contracts is an inherent and inalienable one, and any attempt to unreasonably abridge it is opposed to the constitution. As was aptly said in Leep *vs.* St. Louis, I. M. & S. R. Co., *supra*: 'Where the subject of contract is purely and exclusively private, unaffected by any public interest or duty to person, to society, or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract or controlling the terms thereof.'" In support of this proposition the court referred also to *Re* Kuback (Cal.), 9 L. R. A., 482, wherein section 2 of an ordinance of the city of Los Angeles was held void, reading as follows: "It shall be unlawful for any contractor, by himself or through another, when having labor performed under any contract with the city, to demand, *de-*

mand, receive, or contract for more than eight hours' labor in one day from any person under his employ or control, with the promise or understanding that such persons so laboring over eight hours shall receive a sum for said day's work more than that paid for a legal day's work"—
108 that is eight hours provided for in section 1. The court held that the ordinance was void so far as it attempted to create a criminal offense. The court also referred to Lowe *v.* Rees Printing Co. (Neb.), 24 L. R. A., 702. In that case the Nebraska supreme court declared void an act that provided that for all classes of mechanics, servants, and laborers, excepting those engaged in farming or domestic labor, a day's work should not exceed eight hours, and that for working any employé over the prescribed time the employer should pay extra compensation for the excess over eight hours, the rate for the payment of the eight hours being taken as the basis on which to reckon such progression. The unconstitutionality was put upon two grounds: First, that it was special legislation discriminating between farm and domestic laborers: and secondly, because the act interfered with the constitutional right of parties to make contracts. An examination of this case will show that it was based upon the authorities cited in a former part of this opinion, which, as we have stated, were based upon the theory of discriminating legislation. What is said upon the right to contract is substantially repetition of the reasoning in those cases upon the general subject. The substance of it is set forth in the quotations we have made in the beginning of this discussion from the decisions of the Supreme Court of the United States.

In Hancock *v.* Yaden, the statutes of Indiana under consideration declared that employés of persons, firms, companies, associations, or corporations engaged in mining or manufacturing should be paid at least once in every two weeks in lawful money of the United States, and that any contract to the contrary or to waive the provisions of the statute shall be null and void. It was also provided that a penalty of one dollar per day, not exceeding double the amount of wages due, might be recovered by the employé for delay in payment, and also for a reasonable attorney's fee. It appears that the contract in that case between the employer and the employé entered into after the passage of the act, so far as
109 material to the questions involved, was as follows: "The said Wm. P. Yaden further agrees to accept his pay or any part thereof, at the option of said Hancock and Conkle, in goods and merchandise, at their store near their said coal mine, and the said Wm. P. Yaden hereby expressly waives his right to demand and receive his wages and pay for mining coal every two weeks in lawful money of the United States, as now provided by law he shall be paid." This contract was made when the relation of employer and employé began and the discussion was limited to that phase of the question. The court construed the statute to prevent the making of such an antecedent contract. Upon the subject of the debtor's right to make contracts and limitations of that right, the court said: "It is a fundamental principle that every member of society sur-

renders something of his absolute and natural rights in all organized states. Without some yielding of absolute rights civil government would be impossible. 'But every man,' says Blackstone, 'when he enters into society gives up a part of his natural liberty.' 'Property and law,' as Bentham says, 'are born and must die together.' The right to dispose of property or labor is a right not wholly surrendered by the citizen, nor yet entirely beyond control by the legislature of the State. The right to contract is an accident of this *jus disponendi;* but the right to contract is not and never has been, in any country where, as in ours, the common law prevails and constitutes the source of all civil law, entirely beyond legislative control. The statute of frauds enables contracting parties to avoid contracts not in writing. The law declares that payment in part of an ascertained debt shall not extinguish it, although the parties agree that it shall do so. Ogboro *vs.* Hoffman, 52 Ind., 439; Smith *v.* Tyler, 51 Ind., 512; Markel *v.* Spitler, 28 Ind., 488. A party will not be allowed to contract to waive the benefit of homestead or exemption laws. Maloney *v.* Newton, 85 Ind., 565; Kneettle *v.* Newcomb, 22 N. Y., 209; Curtis *v.* O'Brien, 20 Iowa, 376; Moxley *v.* Ragan, 10 Bush., 156; 19 Am. Rep., 61. A debtor cannot waive stay of execution
110 by contract. McLane *v.* Elmer, 9 Ind., 239; Develin *v.* Wood, 2 Ind., 102. By the English law a seaman cannot by contract waive his right to wages. Kay, Shipmaster and Seaman, 626. Parties cannot by contract bind themselves in advance not to resort to the courts for the redress of wrongs. Bauer *v.* Samson Lodge, 102 Ind., 262; Dugan *v.* Thomas, 4 New Eng. Rep., 281; 79 Me., 221. A contract providing that a party shall not remove a cause to the Federal court is void. Home Ins. Co. *v.* Morse, 87 U. S., 20 Wall., 455 (22 L. ed., 269); Doyle *v.* Continental Ins. Co., 90 U. S., 535 (24 L. ed., 148). A party will not be allowed to contract without limitation that he will not engage in a particular business. Taylor *v.* Saurman, 110. A statute may require parties to insert in a promissory note the words 'given for a patent.' Herdic *v.* Roessler, 12 Cent. Rep., 68; 109 N. Y., 127; New *v.* Walker, 6 West. Rep., 869; 108 Ind., 365. Priority in the allowance and payment of claims may be regulated by legislation. United States *v.* Fisher, 6 U. S., 2 Cranch, 358. A lien for miners' wages may be made superior to the royalty due to the owners of the mine from the lessees or operators. Warren *v.* Sohn, 11 West. Rep., 361; 112 Ind., 212. Much beyond the doctrine declared in the cases to which we have referred is the ruleing in Churchman *v.* Martin, 24 Ind., 380, wherein it was held that a statute prohibiting parties from contracting to pay attorney's fees is constitutional. The truth is that without law as one of its factors there is really no such thing as a contract. The law is a silent but a ruling factor in every contract. Long *v.* Straus, 4 West. Rep., 235; 107 Ind., 94; Delaware & Hudson Canal Co. *v.* Pennsylvania Coal Co., 75 U. S., 8 Wall., 276, 288."

It is therefore held that the statute as applied to contracts made before entering into employment was a valid one. The court did not have before it the case of a contract after wages had been earned.

One ground of the decision was that the legislature had the right to insist upon all contracts being paid in the lawful money of the Government. Said the court, "It is not simply the govern-
111 ment as a government that is interested in the power to establish and maintain a standard of value; for to every citizen engaged in any business of life it is of vital importance that there should be a fixed and unchanging standard. Without it business, except of the most meager kind, would be at an end, and commerce would be practically annihilated." Upon the subject of the payment of debts or contracts, although the subject was not before the court, it used the following language: "The statute does not preclude parties from making an accord and satisfaction after wages have been earned and services rendered, although it does command that the antecedent contract shall not provide that payment may be made in something other than lawful money of the nation."

In Peel Splint Coal Co. *vs.* West Virginia there were two statutes under consideration. The first was as follows: "It shall be unlawful for any corporation, company, firm, or person engaged in any trade or business, either directly or indirectly, to issue, sell, give or deliver, to any person employed by such corporation, company, firm or person, in payment of wages due such laborer, or as advances for labor not due, any scrip, token, draft, check, or other evidence of indebtedness, payable or redeemable otherwise than in lawful money; and, if any such scrip, token, draft, check or other evidence of indebtedness, be so issued, sold, given, or delivered to such laborer, it shall be construed, taken, and held in all courts and places to be a promise to pay the sum specified therein in lawful money by the corporation, company, firm or person issuing, selling, giving or delivering the same to the person named therein, or to the holder thereof. And the corporation, company, firm, or person, so issuing, selling, giving, or delivering the same shall, moreover, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars, nor more than one hundred dollars, and, at the discretion of the court, the officer or agent of the corporation, company or firm, or the person issuing, selling, giving or delivering the same, may be imprisoned not less than ten nor more than thirty days."
112 The other sections are variations of the same thought and need not be quoted. The vital matter complained of in the other statute was that coal mined and paid for by weight should be weighed in the car in which it is removed from the mine before it is screened, and should be paid for, according to the weight so ascertained, at such price per ton as may be agreed on by the owner or operator and the miners who mined the same. There were other provisions, but they need not be specially noticed here. The judges were equally divided upon the constitutionality of the statutes, and there was therefore an affirmance. Mr. Justice Lucas, who delivered the leading opinion in favor of the constitutionality of the statute, after a discussion of the police power and a statement of several instances in which it had interfered with the liberty of contract, thus states the grounds of the decision:

"Upon the whole, therefore, we are not able to say that the legislature has transcended its inherent power to make reasonable police regulations, or that it has violated the articles of the constitution of this State quoted above. We base this decision in this case, first, upon the ground that the defendant is a corporation in the enjoyment of unusual and extraordinary privileges, which enables it and similar associations to surround themselves with a vast retinue of laborers, who need to be protected against all fraudulent or suspicious devices in the weighing of coal or in the payment of labor; secondly, the defendant is a licensee, pursuing an avocation which the State has taken under its general supervision for the purpose of securing the safety of employés by ventilation, inspection, and governmental report, and the defendant therefore must submit to such regulations as the sovereign thinks conducive to public health, public morals, or public security.

"We do not base this decision so much upon the ground that the business is affected by the public use, but upon the still
113 higher ground that the public tranquillity and the good and safety of society demand, where the number of employés is such that specific contracts with each laborer would be improbable, if not impossible, that in general contracts justice shall prevail as between operator and miner, and in the company's dealing with the multitude of laborers with which the State has by special legislation enabled the owners and operators to surround themselves that all opportunities for fraud shall be removed. The State is frequently called upon to suppress strikes, to discountenance labor conspiracies, to denounce boycotting as injurious to trade and commerce, and it cannot be possible that the same police power may not be invoked to protect the laborer from being made the victim of the compulsory power of that artificial combination of capital which special State legislation has originated and rendered possible. It is a fact worthy of consideration, and one of such historical notoriety that the court may recognize it judicially, that every disturbance of the peace of any magnitude in this State since the civil war has been evolved from the disturbed relations between powerful corporations and their servants or employés. It cannot be possible that the State has no police power adequate to the protection of society against the recurrence of such disturbances which threaten to shake civil order to its very foundations. Collisions between the capitalist and the workingman endanger the safety of the State, stay the wheels of commerce, discourage manufacturing enterprise, destroy public confidence, and at times throw an idle population upon the bosom of the community. Surely the hand of the legislature cannot be so restricted as to prohibit the passage of laws directly intended to prevent and forestall such collisions." Again, upon a rehearing, after referring to sundry ancient English acts regulating the rights of employers and employés, he continues: "These were some of the more important of the acts repealed and consolidated in the 'Truck act' of Wm. IV. Upon their very face they proclaim
114 their object 'to prevent abuses and frauds,' and they were therefore police regulations in the strictest sense of the term.

Down through the centuries, hand in hand, and consolidated into one police regulation, have come these conspiracy laws to protect capital and these truck laws to protect labor, and both to protect society; and are we now to be told that the effect of adopting our free American Constitution is to leave in full vigor the power to protect capital, but to destroy the concomitant and correlative power to protect labor? The two powers, associated in their exercise for centuries, have not been divorced by American institutions. Such an idea is not to be entertained for a moment. The American lawmakers are presumed to have known of the existence of these police powers at common law, and in the statute law of England embedded for centuries, and it is not to be presumed when they framed the restrictions of our Constitution that they meant to prohibit the exercise of such police powers when demanded in behalf of the security of society and necessary to prevent fraud and abuse."

On the other hand, Mr. Justice English, who delivered the leading opinion in opposition to the constitutionality of the act, used the following language: "Now, indictment No. 4, under consideration in this case, was found under section 1, chap. 76, Acts 1891, which provides that 'it shall be unlawful for any corporation, company, firm, or person engaged in any trade or business, either directly or indirectly, to issue, sell, give, or deliver to any person employed by such corporation, company, firm, or person, in payment of wages due such laborer, or as advances for labor not due, any scrip, token, draft, check or other evidences of indebtedness payable or redeemable otherwise than in lawful money,' etc. Now, this act appears to be aimed exclusively at corporations and persons engaged in trade or business. It would include in its operation a person engaged in farming, which constitutes one of the greatest industries of the country, on which many other depend, and would forbid the farmer from giving his farm hand an order to the village store for merchandise in payment for his labor; and it loses sight of the
115 fact that a large portion of every community is composed of those who have retired from business or who have never engaged in any trade or business. To one of the latter class, who are not engaged in any of the active industries of the country, the act does not apply. He may employ a man to black his boots or groom his horse or spade his garden, but surely he could not be regarded as being engaged in the business of blacking boots, grooming horses, or spading gardens, and if he has not the money in his pocket he may with impunity give his servant an order to the store for goods in payment for his services because he is engaged in no trade or business. It therefore appears that this act singles out those who are engaged in trade or business to the exclusion of those not so engaged, and does the very thing which this court in the case of State *v.* Goodwill has said cannot be done without a violation of the Constitution. In the case of Hancock *v.* Yaden, 121 Ind., 366; 6 L. R. A., 576, a distinction appears to be drawn between a contract made by the miner before the services are performed and a contract made subsequent thereto, and in that case it

was held that the contract is void in so far as it assumes by an antecedent agreement the right to receive wages in lawful money of the United States, being in violation of the statute; and, further, that the legislature has such authority over the right to contract as to prohibit contracts from being made in advance, waiving the right to payment in lawful medium of payment, and the court seems to concede in its opinion that such an agreement may be made after the services have been rendered. The statute we are considering, however, makes it unlawful for any corporation, firm, or person engaged in any trade or business to issue, sell, give, or deliver to any person employed by such corporation, company, firm, or person, in payment of wages due such laborer or as advances for labor not due, any scrip, token, draft, check, or other evidence of indebtedness payable or redeemable otherwise than in lawful money. This statute would prevent the mine operator from giving to the miner who came to him empty-handed and wanted to labor an order to his store
116 for meat and flour to live on until he earned something. Although accepting said contract would amount to no antecedent agreement to receive all of his wages in goods, yet it might be considered an advance for labor not due, and would thus fall within the inhibition of this statute and result in this: That a mine operator cannot lawfully advance wages in the shape of merchandise to the miner before he has earned them, nor can he pay him in anything but money after the services have been performed, however willing the miner might be to accept it. For these reasons I am of opinion that the act known as the 'screening law' cannot be sustained under the general police power. Neither can the other act be regarded as constitutional for the reasons herein stated, and under the rulings of this court in the case of State *v.* Goodwill, *supra*, and in my opinion, the judgments complained of should be reversed."

We are referred to several cases in our own State as bearing upon the point. They are as follows:

Dugger *vs.* Ins. Co., 11 Pick., 247. In this case the supreme court considered the statute which rendered void the ‡ clause in insurance policies. This case, however, was chiefly determined on the principle that the State had the right to prescribe the terms upon which foreign corporations should come into its borders and do business, but also upon the ground that the right to contract was not unrestricted. The court proceeded to state sundry instances wherein that right had been restricted by constitutional laws, among others the denial of the husband's right to dispose of his wife's property which he had at common law and the right to dispose of loose cotton between sunset and sunrise, and certain others which rest upon special grounds as regulation of the contracts of common carriers, and the rights of married women and minors.

Davis *vs.* The State, 3 Lea, 381. In this case the legislature prohibited the speculation of witness' fees and other fees originating in court. The constitutionality was attacked on the ground that it was opposed to the 8th section of the bill of rights. It was sustained on the ground that the claim of witnesses for the fees allowed by

law is only a chose in action, not assignable by the common
117 law. It was said that the legislature had made such claims assignable, and it was clearly within its competency to take away that quality.

Trust *v.* The State, 13 Lea, 311. This is the case concerning the sale of cotton between sunset and sunrise above referred to. The statute was attacked because of defective title. The question we have before us was not raised.

Bank *v.* Divine Grocery Company, 13 Pick., 603. In that case the court construed the statute under consideration there as absolutely prohibiting a solvent owner from paying his debts with his property, and so construed it was held unconstitutional as a violation of article 1, section 8. The court said the practical effect of the act was to compel debtors to dispose of their property for cash when perfectly solvent and to appropriate the cash to the debt, rather than to exchange the property with the creditor on any advantageous terms which might be offered by the latter, and that the result of this would be the greatest oppression, in that it would hamper and hinder the citizen in the ownership and exchange of property in a way that is absolutely intolerable.

Thus it is seen that the position taken upon one side of the question, broadly stated, is that the right to make contracts for the creation, acquisition, and protection of property is inviolable, and upon the other that numerous restrictions upon the right of contract have hitherto been lawfully imposed by the legislature under the police power, and that the court has the power to sanction new restrictions and to make new exceptions to the right of contracting.

It comes to this at last: Every new attempt on the part of the legislature to assert the police power must be examined on its own merits in relation to the general good of the State. The question always is whether the act in question is conducive to the well-being of society as such; to its safety, its upbuilding, or the
118 health and the morals of its members. Upon such, then, it is for the courts to scrutinize the act and see whether it really relates to and is convenient and appropriate to promote the public health. It matters not that the legislature may in the title to the act or in its body declare that it is intended for the improvement of the public. Such a declaration does not conclude the courts, and they must yet determine the fact declared and enforce the supreme law. In matter of Ryers, 72 N. Y., 1, Folger, J., speaking of the drainage act under consideration, says: "The legislature has done no more than the Constitution permitted in providing in general terms a way for the promotion and preservation of the public health. It is still for the judiciary to see to it that each occasion presents the necessity for the work, and that the purpose to be reached is public. * * * The legislature may condemn or authorize the condemnation of private property for public use, and it may in the exercise of its discretion determine when and upon what property the power of eminent domain may be exercised, but its exercise is not beyond the reach of judicial inquiry. Whether or not a use is a public one, which will justify the exercise of the power, is a judicial question.

It may be difficult sometimes to determine whether a use is public or private. Although the legislature may declare it to be public, that does not necessarily determine its character. It must in fact be public, and, if it be not, no legislative fiat can make it so, and any owner of property attempted to be taken for a use really private can invoke the aid of the courts to protect his property rights against invasion. Rockwell *v.* Nearing, 35 N. Y., 302; Matter of Townsend, 39 N. Y., 171; Matter of Deansville Cemetery Association, 66 N. Y., 569; Matter of Eureka Basin Warehouse and Manufacturing Co., 96 N. Y., 42. The General Government is one of limited powers particularly specified in the Federal Constitution; but, in addition to the powers granted, it is provided in the Constitution that Congress shall have power 'to make all laws which shall be
119 necessary and proper for carrying into execution the foregoing powers.' Under this provision Congress is not the final judge of what is 'necessary and proper,' but its laws must have a legitimate end in view, must be within the scope of the Constitution, must be appropriate and plainly adapted to that end and not prohibited by, but consistent with, the letter and spirit of the Constitution, and whether the laws passed under the implied powers contained in the section cited are of the character mentioned and thus justified is always open to judicial inquiry." McCullock *vs.* Maryland, 4 Wheat., 316, 421; Hepburn *v.* Griswold, 8 Wall., 603; Legal Tender cases, 12 Wall., 467; 110 U. S., 421.

In the case of Lawton *v.* Steele, 152 U. S., 135, 136, in the course of some remarks upon the police power Mr. Justice Brown uses the following language: "To justify the State in thus interposing its authority in behalf of the public it must appear, first, that the interest of the public generally as distinguished from those of a particular class require such interference; and, second, that the means are reasonable and necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. The legislature may not under the guise of protecting the public interest arbitrarily interfere with the private business or impose unusual or unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police power is not final or conclusive, but is subject to the supervision of the courts."

It is thus seen that in the final analysis the duty of the court covers substantially the same ground as the legislature in all cases involving the exercise of the police power at least in several very important particulars. It is true the legislature puts in motion the police power by the passage of an act which the court cannot initiate, and as a part of the act prescribes the details according to which the power in the particular case shall operate. The court does not participate in the preparation of such details, of course; but as to the necessity and propriety of the
120 legislation in question, and also as to whether the means provided for carrying it out are suited for that purpose, the court must consider as well as the legislature and as a veto power, so to speak, upon the legislative act. Where acts based upon what

is usually denominated the police power are passed and are found to be opposed to express provisions of the Constitution, the business of the court is merely to ascertain such opposition and to annul the act. However, in a true sense there could be no real exercise of the police power in opposition to any express constitutional restriction. It often happens that there is an apparent restriction in the Constitution which the courts by construction ascertain to be no restriction at all. This may be treated as one phase in which the police power appears in legislation, but by far the largest number of cases must come under the 14th amendment and under our bill of rights, already quoted, which are in themselves so very general as to require the court, instead of acting under special restrictions, to determine from general considerations of public policy whether the act can be maintained as a proper exercise of the police power. Necessarily everything in consideration of such a matter is referred to the discretion of the court, which in fact has much of the form of legislative discretion. It is not, however, an arbitrary one. There has been gradually built up a body of rules upon this subject by which the courts feel bound. These rules do not purport to cover the whole subject, but have eventuated by judicial inclusion and exclusion into a series of examples which illustrate the scope of the rules with more or less accuracy. Standing in the midst of these rules and in the light of examples furnished by previous judicial determination, the court advances step by step as the exigencies of society indicate. This aspect of the matter may be rendered clearer by a few excerpts from the cases, but here it may be remarked that the reasonin-s of the judges, if not entitled to th- weight of
121 absolute authority, are yet of great importance in showing the trend of judicial thought and the extending lines of the subject as the law reaches out to meet new conditions.

In the matter of Jacobs, *supra*, the court said, in speaking of the police power: "That power is very broad and comprehensive and is exercised to promote the health, comfort, safety, and welfare of society. Its exercise in extreme cases is frequently justified by the maxium *salus populi suprema lex est.* It is used to regulate the use of property by exforcing the maxium *sic utere tuo ut alitenum non laedas.* Under it the conduct of an individual and the use of property may be regulated so as to interfere, to some extent, with the freedom of the one and the enjoyment of the other, and in cases of great emergency, engendering overruling necessity, property may be taken or destroyed without compensation and without what is commonly called due process of law. The limit of the power cannot be accurately defined and the courts have not been able or willing definitely to circumscribe it. But the power, however broad and extensive, is not above the Constitution. When it speaks its voice must be heeded. It furnishes the supreme law, the guide for the conduct of legislators, judges, and private persons, and so far as it imposes restraints, the police power must be exercised in subordination thereto. Judge Cooley, speaking of the regulation by the legislature under the police power of the conduct of corporations holding inviolable charters, says: 'The limit to the exercise of the

police power in these cases must be this, the regulations must have reference to the comfort, safety, and welfare of society; they must not be in conflict with any of the provisions of the charter, and they must not, under pretense of regulation, take from the corporation any of the essential rights and privileges which the charter confers. In short, they must be police regulations in fact and not amendments of the charter in curtailment of the corporate franchise.' Conct. Lim. (4th ed.), 719. In
Potter's Dwarris on Statutes, 458, it is said that 'the
122 limit to the exercise of the police power can only be this, the legislation must have reference to the comfort, the safety, or welfare of society; it must not be in conflict with the provisions of the Constitution.' In Commonwealth *v.* Alger, 7 Cush., 53, 80, Shaw, C. J. says that the police power 'was vested in the legislature by the Constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same. It is much easier to perceive and realize the existence and sources of the power than to mark its limitations or prescribe limits to its exercise.' In Austin *v.* Murray, 16 Pick., 121–126, it is said: 'The law will not allow the rights of property to be invaded under the guise of a police regulation for the promotion of health, when it is manifest that such is not the object and purpose of the regulation.' In Watertown *v.* Mayo, 109 Mass., 315, 319, Colt, J., says: 'The law will not allow rights of property to be invaded under the guise of a police regulation for the preservation of health or protection against a threatened nuisance, and when it appears that such is not the real object and purpose of the regulation, courts will interfere to protect the rights of the citizen.' In the Slaughter-house cases, 15 Wall., 36, 87, Field, J., says: 'All sorts of restrictions and burdens are imposed under the police power, and when these are not in conflict with any constitutional prohibitions or fundamental principles, they cannot be successfully assailed in a judicial tribunal. * * * But under the pretense of prescribing a police regulation, the State cannot be permitted to encroach upon any of the just rights of the citizen which the Constitution intended to secure against abridgment.'

In Coe *v.* Shultz, 07 Barb., 60, a learned judge speaking of the constitutional limitations upon the police power says: 'I am not willing to concede that the legislature can constitutionally declare and act or thing to be a common nuisance, which palpably,
123 according to our present experience or information, is not and cannot be under any circumstances a common nuisance by the common-law definitions or common-law decisions. I am not willing to conclude that the legislature can constitutionally declare or authorize any sanitary commission or board to declare the keeping or the use, in any way, of sugar or vinegar to be a common nuisance because the one is sweet and the other sour, or for any other reason. By such an unlimited power it is easy to see that any citizen might be deprived of his property without compensa-

tion and without any colorable pretext that the public good required such deprivation.'"

In Allgeyer *v.* Louisiana, 165 U. S. Rep., 589, the following language occurs, a portion of which has been already quoted: "The liberty mentioned in that amendment" (the 14th) "means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.

"It was said by Mr. Justice Bradley, in Butchers' Union Company *v.* Cre-cent City Company, 111 U. S., 706, 762, in the course of his concurring opinion in that case, that 'the right to follow any of the common occupations of life is an inalienable right. It was formulated as under the phrase "pursuit of happiness" in the Declaration of Independence, which commenced with the fundamental proposition that "all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." This right is a large ingredient in the civil liberty of the citizen.' Again, on
124 page 763, the learned judge said: 'I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States.' And again, on page 765: 'But if it does not abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, and giving to the others the exclusive right of pursuing it, it certainly does deprive him (to a certain extent) of his liberty; for it takes from him the freedom of adopting and following the pursuit which he prefers; which, as already intimated, is a material part of the liberty of the citizen.' It is true that these remarks were made in regard to questions of monopoly, but they well describe the rights which are covered by the word 'liberty' as contained in the fourteenth amendment.

"Again, in Powell *v.* Pennsylvania, 127 U. S., 678, 680, Mr. Justice Harlan, in stating the opinion of the court, said: 'The main proposition advanced by the defendant is that his enjoyment upon term of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property, is guaranteed by the fourteenth amendment. The court assents to this general proposition as embodying a sound principle of constitutional law.' It was there held, however, that the legislation under consideration in that case did not violate any of the constitutional rights of the plaintiff in error.

"The foregoing extracts have been made for the purpose of showing what general definitions have been given in regard to the meaning of the word 'liberty' as used in the general amendment, but

we do not intend to hold that in no such case can the State exercise its police power. When and how far such power may be legitimately exercised with regard to these subjects must be left for determination to each case as it arises." * * *

"In the privilege of pursuing an ordinary calling or trade and of acquiring, holding, and selling property must be em-
125 braced the right to make all proper contracts in relation thereto, and although it may be conceded that this right to contract in relation to persons or property or to do business within the jurisdiction of the State may be regulated and sometimes prohibited when the contracts or business conflict with the policy of the State as contained in its statutes," &c.

In Lawton *vs.* Steele, *supra*, it is said: "The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every State in the Union. It is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement by summary proceedings of whatever may be regarded as a public nuisance. Under this power it has been held that the State may order the destruction of a house falling to decay or otherwise endangering the lives of passers-by; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars, and habitual drunkards; the suppression of obscene publications and houses of ill-fame, and the prohibition of gambling houses and places where intoxicating liquors are sold. Beyond this, however, the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine not only what the interest of the public require, but what measures are necessary for the protection of such interests."

In Holden *vs.* Hardy, 169 U. S., 366, the learned judge, speaking to the same subject, used this language: "As the possession of property of which a person cannot be deprived doubtless implies that such property may be acquired, it is safe to say that a State law which undertakes to deprive any class of persons
126 of the general power to acquire property would also be obnoxious to the same provision. Indeed, we may go a step further, and say that as property can only be legally acquired as between living persons by contract, that a general prohibition against entering into contracts with respect to property, or having as their object the acquisition of property, would be equally invalid. * * * This right of contract, however, is itself subject to certain limitations which the State may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application

during the past century, owing to an enormous increase in the number of occupations which are dangerous or so far detrimental to the health of employees as to demand special precaution for their well being and protection or the safety of adjacent property. While this court has held, notably in the case of Davidson *v.* New Orleans, 96 U. S., 97, and Yick Wo *v.* Hopkins, 118 U. S., 356, that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety, or morals or the abatement of public nuisances, and a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. * * * But if it be within the power of a legislature to adopt such means for the protection of the lives of its citizens, it is difficult to see why precautions may not also be adopted for the protection of their health and morals. It is as much for the interest of the State that the public health should be preserved as that life should be made secure. With this end in view, quarantine laws have been enacted in most, if not all, of the States; insane asylums, public hospitals, and institutions for the care and education of the blind established, and special measures taken for the exclusion of infected cattle, rags, and decayed fruit. In other States laws have been enacted limiting the hours during which women and children shall be employed in factories; and while their constitutionality, at least as applied to women, has been doubted in some of the States, they have been gener-
127 *States they have been gener*ally upheld. Thus, in the case of Commonwealth *v.* Hamilton Manufacturing Company, 120 Mass., 383, it was held that a statute prohibiting the employment of all persons under the age of eighteen, and of all women laboring in any manufacturing establishment more than sixty hours per week, violates no contract of the Commonwealth implied in the granting of a charter to a manufacturing company, nor any right reserved under the Constitution to any individual citizen, and may be maintained as a health or police regulation." In that case a law was sustained which forbid the employment of workingmen in underground mines for a longer time than eight hours per day, and the employment of workingmen in smelters and other institutions for the reduction or refining of ores or metals longer than eight hours per day except in cases of emergency, where life or property should be in danger. This was sustained on the theory that it was a health regulation. In closing the opinion the court added the following observations, which are of a general nature and also useful in inquiries of this character: "The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operators do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce

to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may promptly interpose its authority.

"It may not be improper to suggest in this connection that although the prosecution in this case was against the employer
128 of labor, who apparently under the statute is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class; but the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality or where the public health demands that one party to the contract shall be protected against himself. The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected the State must suffer.

"We have no disposition to criticise the many authorities which hold that State statutes restricting the hours of labor are unconstitutional. Indeed, we are not called upon to express an opinion upon this subject. It is sufficient to say of them that they have no application to cases where the legislature had adjudged that a limitation is necessary for the preservation of the health of employees, and there are reasonable grounds for believing that such determination is supported by the facts. The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination or the oppression or spoliation of a particular class. The distinction between these two classes of enactments cannot be better stated than by a comparison of the views of this court found in the opinion of Barbier *v.* Connolly, 113 U. S., 37, and Soon Hing *vs.* Crowley, 113 U. S., 703, with those expressed in Yick Wo *v.* Hopkins, 118 U. S., 356."

129 In Barbier *v.* Connolly, 113 U. S., 31, the following language is used by Mr. Justice Field, which is applicable to this subject:

"The fourteenth amendment in declaring that no State 'shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediments

should be interposed to the pursuits of any one except as applied to the same pursuit by others under like circumstances; that no greater burden should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences. But neither the amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and pro-perity. From the very necessity of society, legislation of a special character having these objects in view must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits—for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they
130 are designed not to impose unequal or unnecessary restrictions upon any one, but to promote with as little individual inconvenience as possible the general good. Though in many respects necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which in carrying out a public purpose is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

In Soon Hing *v.* Crowley, 113 U. S. Rep., 703, 709, 710, in which the court was considering some legislation mentioned in the previous case, being restrictions upon the laundry business in San Francisco, the following language is used: "The objection that the fourth section is void on the ground that it deprives a man of the right to work at all times is equally without force. However broad the right of every one to follow such calling and employ his time as he may judge most conductive to his interests, it must be exercised subject to such general rules as are adopted by society for the common welfare. All sorts of restrictions are imposed upon the actions of men, notwithstanding the liberty which is guaranteed to each. It is liberty regulated by just and impartial laws. Parties, for example, are free to make any contracts they choose for a lawful purpose, but society says what contracts shall be in writing and what may be verbally made, and on what days they may be executed, and how long they may be enforced if their terms are not complied with. So, too, with the hours of labor. On few subjects has there been more regulation. How many hours shall constitute a day's work in the absence of contract, at what time shops in our cities shall close at night, are constant subjects of legislation. Laws setting aside Sunday as a day of rest are upheld, not from any right

of the Government to legislate for the promotion of religious observances, but from its right to protect all persons from the physical and moral debasement which comes from uninterrupted
131 labor. Such laws have always been deemed beneficent and merciful laws, especially to the poor and dependent, to the laborers in our factories and workshops and in the heated rooms of our cities, and their validity has been sustained by the highest courts of the State."

After so fully s-ating the position of the authorities pro and con and their tendency to extend the scope of the police power, it is unnecessary that we shall add much to what has been already said. It sufficiently expresses the view we have to say that we do not think that it is clear that the legislature has overstepped constitutional limits in passing the law in question; but we add, further, that we do not think it at all unreasonable that employers should be required to pay the wages of their employés in cash. It is true that it seems on first blush an unwarranted interference with the liberty of private contract to say that such a matter should be regulated by statute, and no doubt it would be unwarrantable to interfere with such a matter where payment has actually been made in coal itself or other property; but here we are dealing with a case where a course of business is pursued whereby employés are systematically, in the main, settled with in coal orders instead of cash, and where, though there is no compulsion in form, yet, in fact, by holding back their wages, such a motive power is brought to bear upon their freedom of choice as to practically amount to coercion. The defendant attempts to explain its retention of its operators' wages by saying that its work is done by the ton, and that it is inconvenient to make up the pay-roll so as to pay off its laborers any more closely than as indicated by the twenty days' reserve, but the incorrectness of this explanation is shown by the fact that it pays off the amounts due at the end of each week if the laborer will take his wages in coal. If estimates can be made up for payment in coal orders, it can also be made up for payment in cash. We do not think the explanation clears up the matter. On the contrary, we think the facts found show a species of compulsion whereby the defendant takes advantage of the necessities or of the improvidence of its employés and so places them in a position where they feel
132 compelled to take their wages in coal orders. As a rule, laborers are a dependent class, and more than any other need the protecting power of the law. Their situation is such, and their habits of life, that they cannot do a great deal in the way of self-protection in the matter of making contracts. Even if their necessities would permit them to haggle, their condition in life is such that they are unable to much forecast the consequences of their contracts; but, passing this point, their necessities are such that in order to live they must work for those who will employ them. It is not too much that the State shall interpose somewhat for their protection. We grant that this power should be exercised cautiously by the legislature, and still more cautiously by the courts, and that great care should always be taken not to infringe upon the

just rights of employés, but at the same time equal care should be taken not to sacrifice to the maintainance of an abstraction the correction of a real injury. The course indicated should be entered upon and travelled cautiously, and each matter considered carefully, with due regard to the rights of the employer and the employé. We do not think there can be any great danger of revolutionary action or of oppression if each new act can be thoroughly and conscientiously considered and debated by the courts and annulled if deemed improper. Safe progress can advance only along these lines. It is in this way that all sound progress and development in our institutions have been secured in the past. In the light of this past we need not fear the future.

All the judges concur.

M. M. NEIL, *Judge.*

133 Court of Chancery Appeals of Tennessee, at Knoxville, Sept. Special Term, 1899.

FRIDAY, *October 6th*, 1899.

Court met pursuant to adjournment.

Present and presiding: The Honorable Judges S. F. Wilson, R. M. Barton, & M. M. Neil.

The minutes of yesterday were read and signed, when the following proceedings were had, to wit:

SAM. HARBISON *vs.* KNOXVILLE IRON CO. } Affirmed and Appealed.

This cause came on to be heard before the court of chancery appeals this October 7th, 1899, upon the transcript of the record from the chancery court of Knox county, Tennessee, the appeal of the defendant from the chancellor's decree, and the defendant's assignment of error to said decree, from the consideration of all which the court adjudges that there is no error in the decree of the chancellor, and the same is hereby in all things affirmed.

It is therefore decreed that the complainant have and recover of and from the defendant, The Knoxville Iron Company, and Lucky, Sanford & Fowler, sureties on appeal bond, the sum of $1,702.66, together with interest from August 5th, 1899, amounting to $17.02, making a total of $1,719.68, for which let execution issue.

The costs of the appeal are adjudged against the defendant and Lucky, Sanford & Fowler, their sureties on the appeal bond, and the costs of the court below are adjudged against the defendant, for all which let execution issue.

A written opinion of the court, giving its findings of fact and conclusiond of law, is filed with and made a part of the record in this cause.

From the foregoing decree the defendant prays an appeal to the supreme court, which is granted.

134 In the Supreme Court of Tennessee, at Knoxville.

SAMUEL HARBISON
vs.
KNOXVILLE IRON CO. } From the Chancery Court of Knox County.

Appellant's Brief & Assignments of Error to the Holding and Decree of the Court of Chancery Appeals.

Statement of the case.

This is a bill brought by the complainant as purchaser and holder of certain orders for coal drawn by the laborers of the Knoxville Iron Company. The complainant insists that as holder of said orders he is entitled to their redemption in cash under the provisions of chapter 77 of the Acts of 1899.

The chancellor gave a decree for the complainant for $1,678.00, from which decree the defendant appealed and assigned errors. The case was heard by the court of chancery appeals and the decree of the chancellor affirmed, from which decree defendant appealed to this honorable court.

The pleadings and evidence are fully set out in appellant's original brief and assignments of error filed September 16th, 1899, which is here referred to and prayed to be herein incorporated as if fully set out.

Assignments of Errors.

The honorable court of chancery appeals erred in holding that complainant was entitled to recover a judgment for money on the orders exhibited with his original bill and in affirming the decree of the chancellor and pronouncing a judgment upon said orders against defendant for the sum of $1,719.68 and costs, and in adjudging costs of appeal against defendant's sureties.

135 This was error, and the complainant's bill should have been dismissed for the reasons fully set out in appellant's original assignment of errors, above referred to, and contained in said assignment of error from pp. 6 to 30, inclusive, to which specific reference is here made, and which are prayed to be deemed a part hereof as if fully set out herein.

Respectfully submitted.

LUCKY, SANFORD & FOWLER,
Sol's for Appellant.

136 Filed Nov. 8, 1899. J. G. Stuart, D. C.

SAM. HARBISON
vs.
KNOXVILLE IRON CO. } Opinion.

The bill in this case was filed to collect an alleged indebtedness of $1,678.00. The chancellor granted the relief sought, and the court of chancery appeals affirmed his decree

The defendant is a domestic corporation engaged in the manufacture and sale of iron and in the mining and sale of coal. It employs about two hundred laborers and has one regular pay-day each month, being that Saturday which is nearest to the 20th of the particular month. On this day each employee is paid in cash the amount due him up to the first day of the month, but never up to the day of payment. On every Saturday in the month, however, the defendant holds itself in readiness to pay all of its employés the full amount *them* due them if they will receive it in orders for coal, at twelve cents per bushel, and the afternoon of every Saturday, from 1 o'clock to five o'clock, is set apart for that purpose. About seventy-five per cent. of all the wages earned by the laborers is paid in these coal orders. The orders are in the following form:

"Let bearer have — bushels of coal, and charge to my account.
"(Signed) —— ——."

"Accepted —— —, 1899.
"KNOXVILLE IRON COMPANY."

The complainant purchased six hundred and fourteen of these orders, aggregating $1,678.00, and thereafter presented them to the defendant on a regular pay-day and demanded payment in cash. Payment being refused, he brought this suit to collect the several orders. He bases his action on sections 1 and 2 of chapter 11 of the Acts of 1899, which are in the following language, viz:

"SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations and companies using coupons, scrip, punchouts, store orders, or other evidences
137 of indebtedness to pay their or its laborers and employees, for labor or otherwise, shall if demanded, redeem the same in the hands of such laborer, employé or *bona fide* holder, in good and lawful money of the United States: Provided, the same is presented and redemption demanded of such person, firm, company or corporation using same as aforesaid, at a regular pay-day of such person, firm, company or corporation to laborers or employés, or if presented and redemption demanded as aforesaid by such laborers, employee or *bona fide* holders at any time not less than thirty days from the issuance or delivery of such coupons, scrip, punchout, store order, or other evidences of indebtedness to such employees, laborers or *bona fide* holders. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness: Provided further, said face value shall be in cash the same as its purchasing power in goods, wares and merchandise at the commissary, company store or other repository of such company, firm, person or corporation aforesaid.

SEC. 2. Be it further enacted, That any employee, laborer, or *bona fide* holder referred to in sec. 1 of this act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in

his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in section 1 of this act."

The company defends upon three grounds:

(1.) That the act does not apply to a case like this;

(2.) That complainant is not a *bona fide* holder; and

(3.) That the act is unconstitutional.

These defenses will be considered in the order named:

138 First. The substance of the first contention is that by a correct construction it must be held that "All persons, firms, corporations, and companies using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay their or its laborers or employees" means only such persons, firms, corporations, and companies as are accustomed to use coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay their or its laborers or employees, and as so use them arbitrarily, and that the defendant has no such custom, and is therefore not included in the terms of the act. No reason is perceived by the court for so restricting and limiting the broad and unqualified words of the statute. The evident intention of the legislature was to include every person, firm, corporation, and company using coupons, scrips, punchouts, store orders, or other evidences of indebtedness to pay their or its laborers and employees, whether such use be habitual and arbitrary or only occasional and without constraint.

But if this were not true the defendant is included by its own construction. The court of chancery appeals found that the defendant is so accustomed to use coal orders that it "in that way pays off about seventy-five per cent. of the wages earned by its employees," and that its course of business in that respect is one "whereby employees are systematically, in the main, settled with in coal orders instead of cash, and where though there is no compulsion in form, yet in fact by holding back their wages such a motive power is brought to bear upon their freedom of choice as to practically amount to coercion;" that the facts of the case show a species of compulsion whereby the defendant takes advantage of the necessities of the improvidence of its employees and so places them in a position where they feel compelled to take their wages in coal orders.

So that by the true construction and also by that suggested by the defendant it is included in the provisions of the statute.

Second. It is next contended that complainant is not a *bona fide* holder, because he purchased the coal orders sued upon at a

139 discount of fifteen cents on the dollar. It is true that complainant gave only eighty-five cents on the dollar for these orders, but that does not prevent him from being a *bona fide* holder within the meaning of the statute. He made the purchases upon the open market fairly and honestly, and gave ten cents more on the dollar for the orders than they had usually sold for. To constitute him a *bona fide* holder it is only necessary that he should

have bought the orders fairly, honestly, and for a reasonable price in good faith as contradistinguished from bad faith.

The suggestion that complainant's recovery, if allowed at all, should be limited to the price paid is conclusively answered by the provisions of the statute that the redemption or recovery shall be for "the face value of such scrips, punchouts, coupons, store orders, or other evidences of indebtedness."

Third. Finally it is said that the act abridges the right of contract, and for that reason it is challenged as repugnant to that part of section 1 of the 14th amendment to the Constitution of the United States which declare that no State shall "deprive any person of life, liberty, or property without due process of law," and to that part of section 8 of article 1 of the constitution of Tennessee which declares that "no man shall be * * * deprived of his life, liberty, or property, but by * * * the law of the land."

A corporation is a "person" within the provision against deprivation of life, liberty, or property "without due process of law" (C. & L. Turnpike Road Co. *vs.* Sanford, 164 U. S., 578; Gulf, C. & S. F. R'y *vs.* Ellis, 165 U. S., 154; Dugger *vs.* Insurance Co., 95 Tenn., 250), and it is a "man" within the provision against deprivation of liberty or property otherwise than by "the law of the land" (Railroad *vs.* Harris, 99 Tenn., 705). Hence the defendant, which is a corporation, is entitled to the protection guaranteed by both provisions.

The "liberty" contemplated in each provision means not only the right of freedom from servitude, imprisonment, or physical restraint, but also the right to use one's faculties in all lawful
140 ways, to live and work where he chooses, to pursue any lawful calling, vocation, trade, or profession, to make all proper contracts in relation thereto, and to enjoy the legitimate fruits thereof.

In Matter of Jacobs, 98 N. Y., 98; S. C., 50 Am. R., 640.
Allgeyer *vs.* Louisiana, 165 U. S., 589.
Holden *vs.* Hardy, 169 U. S., 391.
Powell *vs.* Pennsylvania, 127 U. S., 684.

"Property," as the word is there used, signifies not only those tangible things of which one may be the owner, but everything he may have of an exchangeable value. It includes the right to acquire and dispose of property, and to make all lawful contracts essential to those ends, and such contracts are entitled to the same protection as the property itself. Holden *vs.* Hardy, 169 U. S., 391; Dugger *vs.* Insurance Co., 95 Tenn., 252; Bank *vs.* Divine Grocery Company, 97 Tenn., 611, 612.

"In the privilege of pursuing an ordinary calling of trade, and of acquiring, holding, and selling property must be embraced the right to make all proper contracts in relation thereto." Allgeyer *vs.* Louisiana, 165 U. S., 591. "Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies to a large extent

at the foundation of most other forms of property, and of all solid individual and national prosperity."

Slaughter-house cases (dissenting opinion of Judge Swayne), 16 Wal., 127.

Therefore the right of contract is undoubtedly an inherent part of the right of liberty and also of the right of property, and deprivation of it is equally forbidden.

But none of them are unlimited rights. All are subject to the law's control, and may at any time be abridged or enlarged, or even destroyed, within constitutional bounds. None of them can be affected or taken away, except by "due process of law" or the "law of the land," yet all of them may be curtailed or de-
141 stroyed by that means. The declaration against deprivation "without due process of law" or otherwise than by the "law of the land" necessarily implies that deprivation may be rightly accomplished and justified by such process or law. What, then, is "due process of law" or "the law of the land"? The two phrases have exactly the same import, and that which is entitled to recognition as the one is to be recognized as the other also.

Davidson *vs.* New Orleans, 96 U. S., 101.
Railroad *vs.* Harris, 99 Tenn., 704.
Cooley, Const. Lim., 5th edition, 431.
Black's Const. Law, 479.

The present statute, if valid, is "the law of the land," as to the provisions thereof, and that which is accomplished by it is done "by due process of law." All valid laws, statutory and otherwise, now existing in this State, constitute the aggregate body of our present "law of the land;" and each part, each separate law that is complete in itself, may properly be called the "law of the land," as to the matter or matters embraced therein. Some of these laws are old and some are new. They are constantly changing, and for that reason it is impossible to formulate a definition that will, at all times, include everything that may be or come within and exclude everything that may be or fall without the true meaning of the phrase "law of the land."

Recognizing the difficulty of giving any "definition which would be at once perspicuous, comprehensive, and satisfactory," Mr. Justice Miller said, it was the part of wisdom to ascertain the intent and application of so important *and* phrase "by the gradual process of judicial inclusion and exclusion, as *to* the cases presented for decision shall require, with the reasoning on which such decision may be founded." Davidson *vs.* New Orleans, 96 U. S., 104. A like view is still entertained and enforced by the Supreme Court of the United States. Holden *vs.* Hardy, 169 U. S., 390.

Nevertheless, many useful and approved definitions are to be found, and a few of them are here repeated.

"Due process of law is the application of the law as it exists in the fair and regular course of administrative procedure."
142 Slaughter-house cases, 16 Wal., 127. "As to the words from Magna Charta incorporated into the constitution of Maryland,

after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestricted by the established principles of private rights and distributive justice." Bank of Columbus *vs.* Okely, 4 Wheaton, 244. By "the law of the land" is most clearly intended the general law—a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society." Webster's argument in Dar-mouth College *vs.* Woodard, 4 Wheaton, 518.

"Due process of law" is process due according to "the law of the land." This process in the States is regulated by the law of the State. Walker *vs.* Sauvinet, 92 U. S., 93.

"Whatever in the regular administration of law in a State is general and impartial in its operations on all persons is 'due process.'" 2 Tucker's Const. U. S., sec. 390.

"Law in its regular course of administration, through courts of justice, is due process, and when secured by the law of a State the constitutional requisition is satisfied—2 Kent. Com., 13—and 'due process' is so secured by laws operating on all alike and not subjecting the individual to arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice." Caldwell *vs.* Texas, 137 U. S., 697. It is sufficient for the purposes of this case to say that legislation is not open to the charge of depriving one of his rights without "due process of law" if it be general in its operation upon the subjects to which it relates and is enforcible in the usual modes established in the administration of government with respect to kindred matters—that is, by process or proceedings adapted to the nature of the case. Dent *vs.* West Virginia, 129 U. S., 124.

143 When applied to general legislation, the clause "law of the land" was defined in our earlier cases to mean a general and public law equally binding upon every member of the community, but by our later cases it is defined to mean a law which embraces all persons who are or may come into like situation and circumstances (The Stratton Claimants *vs.* The Morris Claimants, 89 Tenn., 521; Sutton *vs.* State, 96 Tenn., 703; Hurley *vs.* State, 98 Tenn., 698), and when applied to special or class legislation it means, in addition, that "the classification must be natural and reasonable, not arbitrary and capricious." Sutton *vs.* The State, 96 Tenn., 710; Railroad *vs.* Harris, 99 Tenn., 705. Though operating equally on all persons in like condition while in existence, "the law of the land" on no subject can be truly said to be immutable. On the contrary, it is always subject to change, by diminution or enlargement, by repeal or substitution, as different and new conditions arise; otherwise there could be no advance in legislation or legal development, and the legislative department of the Government would be wholly unnecessary and superfluous. The law is, in fact,

a progressive science, and its growth must be allowed to keep pace with the advance of civilazation.

Mr. Justice Matthews says: "This flexibility and capacity for growth and adaptation is the peculiar boast and excellence of the common law. * * * The Constitution of the United States was ordained, it is true, by descendents of Englishment, who inherited the traditions of English law and history, but it was made for an undefined and expanding future and for a people gathered and to be gathered from many nations and of many tongues; and while we take just pride in the principles and institutions of the common law, we are not to forget that in lands where other systems of jurisprudence prevail the ideas and process of civil justice are also not unknown. "Due process of law," in spite of the absoluteism of continental governments, is not alien to that code which survived the Roman Empire as the foundation of modern civilization in
144 Europe, and which has given us that fundamental maxim of distributive justice, *Suum cuique tribuere.* There is nothing in Magna Charta, rightly construed as a broad charta of public right and law, which ought to exclude the best ideas of all systems and of every age, and as it is was the characteristic principle of the common law to draw its inspiration from every fountain of justice, we are not to assume that the sources of its supply have been exhausted. On the contrary, we should expect that the new and various experiences of our situation and system will mold and shape it into new and not less useful forms. Hurtado *vs.* California, 110 U. S., 531. Some of the changes made in the common law as the result of intelligent progress during the present century are enumerated by Mr. Justice Brown as follows:

"The whole fabric of special pleading, once thought to be necessary to the elimination of the real issue between the parties, has crumbled to pieces. The ancient tenures of real estate have been largely swept away, and land is now transferred almost as easily and cheaply as personal property. Married women have been emancipated from the control of their husbands and placed upon a practical equality with them with respect to the acquisition, possession, and transmission of property. Imprisonment for debt has been abolished. Exemption from execution has been largely added to, and in most of the States homestead- are rendered incapable of seizure and sale upon forced process. Witnesses are no longer incompetent by reason of interest, even though they be parties to the litigation. Indictments have been simplified, and an indictment for the most serious of crimes is now the simplest of all." Holden *vs.* Hardy, 169 U. S., 386.

When first adopted in Magna Charta, the phrase "the law of the land" had reference to the common and statute law then existing in England, and when embodied in our Constitution it referred to the same common law as previously modified, and so far as suited to the wants and conditions of our people in a new country.
145 At present "the law of the land" embraces the same body of laws as still further modified, those parts validly cut off being now excluded and those validly added being now included.

Every valid statute of the State now in existence, whenever enacted in the present "law of the land" in respect to the subject-matter of that statute, and every existing enactment passed with due form and ceremony and not in conflict with some provision of the State or Federal Constitution, is a valid statute; and no statute otherwise valid is unconstitutional because affecting one's life, liberty, or property if, when being general, it embraces all persons who are or may be in like situation and circumstances (The Stratton Claimants *vs.* The Morris Claimants, 89 Tenn., 521; Henly *vs.* The State, 98 Tenn., 698), or when, being special, it is in addition natural and reasonable in its classification (Sutton *vs.* The State, 96 Tenn., 710; Railroad *vs.* Harris, 99 Tenn., 705), or, as otherwise expressed, "If it be general in its operation upon the subjects to which it relates and is enforcible in the usual modes established in the administration of government with respect to kindred matters." Dent *vs.* West Va., 129 U. S., 124. Confessedly, the enactment now called in question is in all respects a valid statute and free from objection as such, except that it is challenged as an arbitrary interference with the right of contract, on account of which it is said that it is unconstitutional and not the "law of the land" or "due process of law."

The act does, undoubtedly, abridge or qualify the right of contract, in that it requires that certain obligations payable in the first instance in merchandise shall in certain contingencies be paid in money, yet it is as certainly general in its terms, embracing equally every employer and employé who is or may be in like situation and circumstances, and it is enforcible in the usual modes established in the administration of governments with respect to kindred matters.

146 The exact and precise requirement is that all employers, whether natural or artificial persons, paying their employees in "coupons, scrip, punch-outs, store orders, or other evidences of indebtedness" shall redeem the same at face value in money, if demanded by the employé or a *bona fide* holder on a regular pay-day or at any time not less than thirty days from issuance (sec. 1), and that if payment be not so made upon such demand, the owner may maintain a suit on such evidence of indebtedness and have a money recovery for the face value thereof in any court of competent jurisdiction (sec. 2).

There is no prohibition against the issuance of any of the obligations referred to, nor against payment in merchandise or otherwise according to their terms, but only a provision that they shall be paid in money at the election and upon a prescribed demand of the owner. In other words, the effect of the act is to convert into cash obligations such unpaid merchandise orders, etc., as may be presented for money payment on a regular pay-day or as much as thirty days after issuance.

Under the act the present defendant may issue weekly orders for coal, as formerly, and may pay them in that commodity when desired by the holder, but instead of being able, as formerly, to compel the holder to accept payment of such orders in coal, the holder may, under the act, compel defendant to pay them in money. In

this way and to this extent the defendant's right of contract is affected.

Under the act, as formerly, every employé of the defendant may receive the whole of a part of his wages in coal orders, and may collect the orders in coal or transfer them to some one else for other merchandise or for money. His condition is bettered by the act, in that it naturally enables him to get a better price for his coal orders than formerly, and thereby gives him more for his labor; and yet, although the defendant may not in that transaction realize the expected profit on the amount of coal called for in the orders, it in no event pays more in dollars and cents for the labor than the contract price.

The scope and purpose of the act are thus indicated. The
147 legislature evidently deemed the laborer at some disadvantage under existing laws and customs, and by this act undertook to ameliorate his condition in some measure by enabling him or his *bona fide* transferee, at his election and at a proper time, to demand and receive his unpaid wages in money rather than in something less valuable. Its tendency, though slight it may be, is to place the employer and employé upon equal ground in the matter of wages, and, so far as calculated to accomplish that end, it deserves commendation. Being general in its operation and enforcible by ordinary suit, and being unimpeached and unimpeachable upon other constitutional grounds, the act is entitled to full recognition as the "law of the land" and "due process of law" as to the matters embraced, without reference to the State's police power, as was held of an act imposing far greater restrictions upon the right of contract, in the case of Dugger *vs.* Insurance Company, 95 Tenn., 245, and as had been previously decided in respect of other limiting statutes therein mentioned. *Ib.*, 253, 254.

Furthermore, the passage of the act was a legitimate exercise of police power, and upon *the* ground also the legislation is well sustained. The first right of a State, as of a man, is self-protection, and with the State that right involves the universally acknowledged power and duty to enact and enforce all such laws not in plain conflict with some provision of the State or Federal Constitution as may rightly be deemed necessary or expedient for the safety, health, morals, comfort, and welfare of its people. City of N. Y. *vs.* Miln, 11 Peters, 139; Passenger cases, 7 Howard, 457; Slaughter-house cases, 16 Wall., 36–62; Butchers' Union Co. *vs.* Crescent City Co., 111 U. S., 746; Bowman *vs.* Railroad, 125 U. S., 465; Lawton *vs.* Steele, 152 U. S., 136; Reelfoot Lake Levee District *vs.* Dawson, 97 Tenn., 172; Smith *vs.* The State, 100 Tenn., 494; Austin *vs.* The State, 101 Tenn., 567; Cooley's Const. Lim. (5th edition), 706; Black's Const. Law, sec. 154, and other authorities too numer-
148 ous to mention.

This power is an important and comprehensive one, and its application must be expected and allowed to expand and take in new subjects from time to time as trade and business advance and new conditions arise. The scope of its exercise within the bound already mentioned is limited only by the requirement that it shall

not arbitrarily and unreasonably affect the citizen in his life, liberty, and property. It cannot be an excuse for oppressive legislation (Davidson *vs.* New Orleans, 96 U. S., 97; Yick Wo *vs.* Hopkins, 118 U. S., 356), but it covers everything relating to the public interests, and in its exercise a large discretion is necessarily vested in the legislature, which in the first instance is presumed to know not only what the welfare of the public requires, but also what measures are necessary for its advancement. Kidd *vs.* Pearson, 128 U. S., 1; Lawton *vs.* Steeles, 152 U. S., 136. The right of contract and of property is always subject to reasonable limitation under the State's reserved police power. As to this, Chief Justice Shaw said: "We think it a well-settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that its use may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property not injurious to the rights of the community. * * * Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in it by the Constitution, may think necessary and expedient." Commonwealth *vs.* Alger, 7 Cush., 53, 84.

This language is quoted by Judge Cooley in his Constitutional Limitations, on page 707, and by Mr. Justice Brown in Holden
149 *vs.* Hardy, 169 U. S., 392. It is readily seen from the analysis already given that the limitation placed upon the right of contract by this act is not arbitrary and oppressive, but entirely just and reasonable. While in some sense qualifying certain contracts of the employer, it in no sense works a great hardship upon him. It only requires that in certain events he shall pay the wages of his employé in money rather than in something less desirable. The legislature, as it thought, found the employé at a disadvantage in this respect, and by this enactment undertook to place him and the employer more nearly upon an equality. This alone commends the act and entitles it to a place on the statute book as a valid police regulation.

Besides the amelioration of the employés' condition in the way mentioned, the act was intended and is well calculated to promote the public peace and good order and to lessen the growing tendency to strife, violence, and even bloodshed in certain department of important trade and business. In the case of Holden *vs.* Hardy, already referred to, the court held that a statute of Utah making it a misdemeanor to employ laborers to work under the ground or in smelters for a period of more than eight hours per day, except in cases of emergency, was valid as a police regulation. In conclusion of the opinion in that case, the court mentioned the disadvantage of the employé in the matter of contracting, and justified the State's interference for his protection, and, in doing so, used the following well-chosen language:

"The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, but that their interest- are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employés, while the latter are often induced by the fear of discharge to conform to regulations which their judgments, fairly exercised, would pronounce to be detrimental to their health
150 or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority." 169 U. S., 397. In that case, as in this one, the counsel of the employer urged that the act worked a peculiar hardship upon the employé, in that it violated his right to contract as he pleased. To that contention the court aptly replied, "The argument would certainly come with better grace and greater cogency from the latter class; but the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality or where the public health demands that one party to the contract shall be protected against himself. The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected the State must suffer." *Ib.*

Acts touching the question of contracts between employer and employé in different ways have been passed in several of the States. Most of them, unlike ours, have been both prohibitory and penal. Some have stood the test of constitutionality in the States where passed, and others have not. Enactments against the use of merchandise orders instead of money in the payment of wages have been adjudged unconstitutional and void in Pennsylvania, Missouri, and West Virginia, in some instances upon the ground that the legislation was partial, and in others for the additional reason that it was deemed an arbitrary interference with the right of contract. Godchilds *vs.* Wigeman, 113 Pa., 431; S. C., 6 Atl. R., 354; Showalter *vs.* Ehlan (Pa.), 4 Gen. Dig., 350; State *vs.* Loomis, 115 Mo., 307; S. C., 21 L. R. A., 624.

But after the decision of the last-named case the court deciding it upheld an act of similar import, though more general in its application (Peel Splint Co. *vs.* State W. Va., 17 L. R. A., 385); and an Indiana statute, requiring the payment of wages in law-
151 ful money of the United States and not otherwise, has been adjudged valid as to antecedent contracts to the contrary, in the case of Hancock *vs.* Yaden (Ind.), 6 L. R. A., 576. Likewise, a Kentucky statute, providing that wage-earners "shall be paid for their labor in lawful money," has been, by the court of last resort in that State, treated as valid when applied to cases contemplated by the legislature in passing it, but at the same time the court held the statute to be inapplicable to a case where the laborer, in advance of reasonably frequent pay-days, voluntarily applied for and

received a merchandise order for wages not yet due. Avent. Beattyville Coal Co. *vs.* Commonwealth, 28 L. R. A., 273. The supreme court of Massachusetts, Rhode Island, and Maryland have sustained as constitutional statutes requiring the weekly payment of wages (Red House Bill 1230, Mass., 28 L. R. A., 344; State *vs.* Manufacturing Co., R. I., 17 L. R. A., 856; Shaffer *vs.* Manufacturing Co., 55 Md., 74), while the supreme court of Illinois has held the contrary in respect to a like statute. Braceville Coal Co. *vs.* People, 147 Illinois, 66; S. C., 22 L. R. A., 340.

An act requiring biweekly payment of wages was adjudged constitutional in Indiana in the case of Hancock *vs.* Yaden, 6 L. R. A., 576. Legislation limiting a day's work to eight hours has been adjudged unconstitutional, null, and void in Illinois and Nebraska, because special, and also because an unwarranted infringement upon the right of contract (Ritchie *vs.* People, Ill., 29 L. R. A., 79; Lowe *vs.* Printing Co., Neb., 24 L. R. A., 702), but a similar enactment has been sustained in Utah and in the Supreme Court of the United States as a valid police regulation. Holden *vs.* Hardy, 169 U. S., 366, 369.

Numerous other cases bearing upon these and other aspects of the same general subject are readily found, but their citation at this time is unnecessary.

The act before us is, perhaps, less stringent than any one considered in any of the cases mentioned. It is neither prohibitory nor penal; not special, but general; tending toward equality between employer and employé in the matter of wages; intended and
152 well calculated to promote peace and good order, and to prevent strife, violence, and bloodshed. Such being the character, purpose, and tendency of the act, we have no hesitation in holding that it is valid, both as general legislation, without reference to the State's reserved police power, and also as a wholesome regulation adopted in the proper exercise of that power.

It does not work an arbitrary and oppressive deprivation of the right of a solvent debtor to use, sell, and convey a part of his property in the payment of a part of his debts in good faith, as did the act held to be obnoxious to the Constitution in the case of Bank *vs.* Divine Grocery Company, 97 Tenn., 603–610; but in its relation to the right of contract it is somewhat closely related to that legislation which prohibits, nullifies, and vitiates the stipulation in fire-insurance policies known as the three-fourths clause, which was sustained as constitutional in the case of Dugger *vs.* Insurance Company, 95 Tenn., 245. In the course of the opinion in this case Judge Beard observed that "the right of contracting with regard to one's own is subject to legislative control and conditions," and the observation was abundantly illustrated and supported by the citation of many limiting statutes and well-considered cases. *Ib.*, 253, 254.

In the case of Truss *vs.* State, 13 Lea, 311, an enactment which so far affected the contract rights of purchaser and seller of cotton as to forbid its sale between "sunset and sunrise" was treated as a

legitimate exercise of legislative power, though only the sufficiency of the title was actually discussed in the opinion.

Let the decree be affirmed.

CALDWELL, *J.*

153 Supreme Court of Tennessee, at Knoxville, September Term, 1899.

MONDAY, *November* 13, 1899.

Court met pursuant to adjournment.

Present and presiding: The Honorable Chief Justice D. L. Snodgrass and Associate Justices W. C. Caldwell, Jno. S. Wilkes, W. D. Beard, and Sam. G. Shields.

The minutes of Saturday were read and signed, when the following proceedings were had, to wit:

SAM. HARBISON *vs.* KNOXVILLE IRON CO. } Affirmed.

This cause came on to be heard before the honorable supreme court of Tennessee, sitting at Knoxville, on this the 13th day of Nov., 1899, upon the transcript of the record from the chancery court of Knox county, Tenn., the appeals of the defendant from the decree of the chancellor and of the court of chancery appeals, the defendant's assignment of error, the complainant's replies thereto, and the argument of counsel, from all of which the court being of the opinion that the statute of the State of Tennessee, constituting chapter 11 of the Acts of *1889*, whose validity has been drawn in question by the defendant on the ground that it is repugnant to the fourteenth amendment to the Constitution of the United States and also to the eighth section of the declaration of rights of the constitution of Tennessee, is not repugnant either to said amendment to the Constitution of the United States or to said declaration of rights, and that said statute is in all things valid, it is so decreed and adjudged; and it is further ordered, adjudged, and decreed that there is no error in the decree of either the chancellor or of the court of chancery appeals, and that the same be, and hereby are, in all things affirmed, and that the defendant's assignments of errors be, and they hereby are, overruled.

It is further ordered and decreed by the court that the complainant, Samuel Harbison, have and recover of and from the de-
154 fendant, Knoxville Iron Company, and Lucky, Sanford & Fowler, its sureties on its appeal bond, the sum of $1,719.68, with interest from October 6th, 1899, amounting to $8.60, making a total of $1,728.28, together with all the costs of the chancery court and of the appeal, for all of which execution will issue.

The reasons upon which this decree is based are set out in a written opinion.

155 Filed Nov. 25, 1899. J. G. Stuart, D. C.

In the Supreme Court of Tennessee.

SAMUEL HARBISON
vs.
KNOXVILLE IRON COMPANY. } In Equity.

To the Honorable David L. Snodgrass, chief justice of the supreme court of the State of Tennessee:

The petition of the Knoxville Iron Company respectfully shows that on the 13th day of November, A. D. 1899, the supreme court of the State of Tennessee rendered a decree against your petitioner in a certain cause wherein Samuel Harbison was complainant and your petitioner was defendant for the sum of seventeen hundred and twenty-eight dollars and twenty-eight cents ($1,728.28) and costs and awarded execution thereon, as will appear by reference to the record and proceedings in said cause, and that said court is the highest court of said State in which a decision in said suit could be had.

And your petitioner claims the right to remove said decree and proceedings to the Supreme Court of the United States by writ of error under the statutes of the United States authorizing writs of error to State courts, and especially under section 709 of the Revised Statu-es of the United States, because in said suit the said complainant sought a recovery against your petitioner under and by virtue of a certain statute of the State of Tennessee constituting chapter 11 of the Acts of 1899, and your petitioner drew in question the validity of said statute on the ground that it was repugnant to the fourteenth amendment to the Constitution of the United States, and on this ground denied complainant's right to recovery, and the decision of the said supreme court of Tennessee in said suit was in favor of the validity of said statute, and a decree was rendered against your petitioner as aforesaid: all of which appears by the record and proceedings in said cause as aforesaid.

156 Wherefore your petitioner prays the allowance of a writ of error, returnable into the Supreme Court of the United States, and for citation and supersedeas; and it will ever pray.

KNOXVILLE IRON COMPANY, *Petitioner*,
By WM. P. CHAMBERLAIN, *President*.

C. E. LUCKY,
EDWARD T. SANFORD,
J. A. FOWLER,
Solicitors for Petitioner.

Filed Nov. 25, 1899.
ALEX. McMILLAN, *Clerk*.

157 Filed Nov. 25, 1899. Alex. McMillan, Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Tennessee, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Samuel Harbison, complainant, and The Knoxville Iron Company, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission, held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of said Constitution, treaty, stat-e, or commission, a manifest error hath happened, to the great damage of the said Knoxville Iron Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

The Seal of the Circuit Court, District of East Tenn.

HENRY O. EWING,
Clerk of the United States Circuit Court for the Eastern District of Tennessee, Northern Division,
By J. T. CARTER,
Deputy Clerk.

Allowed to operate as a supersedeas.

D. L. SNODGRASS,
Chief Justice of the Supreme Court of the State of Tennessee.

Fee, $1.00, paid by Knoxville Iron Co. through Lucky, Sanford & Fowler, sol'rs.

J. T. CARTER, *Dep. Clerk.*

158 UNITED STATES OF AMERICA, *ss:*

To Samuel Harbison, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Tennessee, at Knoxville, wherein The Knoxville Iron Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable David L. Snodgrass, chief justice of the supreme court of the State of Tennessee, this the 25th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

D. L. SNODGRASS,
Chief Justice of the Supreme Court of the State of Tennessee.

I hereby acknowledge service of the within and foregoing citation and of the writ of error therein mentioned for and on behalf of the defendant in error, Samuel Harbison, this November 25, 1899.

SAM'L G. SHIELDS, *Solicitor.*

159 Filed November 25th, 1899. Alex. McMillan, Clerk.

Know all men by these presents, that we, the Knoxville Iron Company, as principal, and C. E. Lucky, Edward T. Sanford, and James A. Fowler, as sureties, are held and firmly bound unto Samuel Harbison in the full and just sum of thirty-five hundred dollars ($3,500.00), to be paid to the said Samuel Harbison, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this the 25th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a session of the supreme court of the State of Tennessee, at Knoxville, in a suit pending in said court between Samuel Harbison and the Knoxville Iron Company, a final decree was rendered against the said Knoxville Iron Company, and the said Knoxville Iron Company having obtained the allowance of a writ of error and filed a copy thereof in the clerk's office of said court to reverse the decree in the aforesaid suit, and a citation directed to the said Samuel Harbison, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Knoxville Iron Company shall prosecute said writ of error to effect and answer all damages and costs[1] if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

KNOXVILLE IRON COMPANY, [SEAL.]
By WM. P. CHAMBERLAIN, *President.*
C. E. LUCKY. [SEAL.]
EDWARD T. SANFORD. [SEAL.]
J. A. FOWLER. [SEAL.]

Sealed and delivered in the presence of—
M. O. CARPENTER.
LOUIS R. SHERIDAN.

Approved to operate as a supersedeas by—
D. L. SNODGRASS,
Chief Justice of the Supreme Court of the State of Tennessee.

160 *Writ of Error to the Supreme Court of Tennessee.*

In the Supreme Court of the United States.

KNOXVILLE IRON COMPANY, Plaintiff in Error,
vs.
SAMUEL HARBISON, Defendant in Error. } In Equity.

Assignments of Error.

Filed Dec. 22, 1899. J. G. Stuart, Deputy Clerk.

Comes now The Knoxville Iron Company, plaintiff in error, by its counsel, and respectfully represents that it feels itself to be aggrieved by the proceedings and decree of the supreme court of the State of Tennessee in the above-entitled cause, and assigns error thereto as follows:

1. The said court erred in ordering, adjudging, and decreeing that the statute of the State of Tennessee, constituting chapter 11 of the Acts of 1899, under which the defendant in error claimed a money recovery against the plaintiff in error, was not repugnant to the fourteenth amendment of the Constitution of the United States, and was in all things valid, and in rendering a decree in favor of the defendant in error and its sureties for the sum of $1,728.28 and all the costs of the cause.

2. The said court erred in that the validity of the aforesaid statute of the State of Tennessee, constituting chapter 11 of the Acts of 1899, having been drawn in question by the plaintiff in error on the ground that it deprived the plaintiff in error of its liberty and property without due process of law, and was repugnant to section 1 of the fourteenth amendment of the Constitution of the United States, the decision of said court was in favor of the validity of said statute, and the aforesaid decree was rendered by said court

under the provisions of said statute in favor of the defendant in error and against the plaintiff in error.

3. The said court erred in that the validity of the aforesaid statute of the State of Tennessee, constitution chapter 11 of the Acts of 1899, having been drawn in question by the plaintiff in
161 error on the ground that it abridged the privileges and immunities of the plaintiff in error, a citizen of the United States, and was repugnant to section 1 of the fourteenth amendment of the Constitution of the United States, the decision of said court was in favor of the validity of said statute, and the aforesaid decree was rendered by said court under the provisions of said statute in favor of the defendant in error and against the plaintiff in error.

Wherefore the said Knoxville Iron Company, plaintiff in error, prays the honorable court to examine and correct the errors assigned, and for a reversal of the decree of the supreme court of the State of Tennessee entered in the above-entitled cause.

KNOXVILLE IRON COMPANY,
By C. E. LUCKY,
EDWARD T. SANFORD,
J. A. FOWLER, *Its Solicitors.*

162 Office of the clerk of the supreme court for the eastern division of the State of Tennessee.

I, Alex. McMillan, clerk of said court, do hereby certify that the foregoing is a true, perfect, and complete copy of the transcript and all proceedings of said court had at its September term, 1899, in the case of Sam. Harbison *vs.* Knoxville Iron Company, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office in Knoxville, on this the 22nd day of December, 1899.

[Seal of the Supreme Court, Knoxville, Tenn.]

ALEX. McMILLAN, *Clerk.*

Clerk Alex. McMillan, making transcript, &c.... ... ... $62.19

Above transcript fee, $62.19, paid by Knoxville Iron Co., through Lucky, Sanford & Fowler, sols.

This Dec. 22, 1899.

J. G. STUART,
Deputy Clerk.

Endorsed on cover: File No., 17,593. Tennessee supreme court. Term No., 174. The Knoxville Iron Company, plaintiff in error, *vs.* Samuel Harbison. Filed December 26th, 1899.

No. 174, 22.

JAN 21 1901
JAMES H. McKENNEY,
Clerk

Brf. of Lucky for P. C.

SUPREME COURT OF THE UNITED STATES.

Filed Jan. 21, 1901.

OCTOBER TERM, 1900.

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THE KNOXVILLE IRON COMPANY, Plaintiff in Error,

vs.

SAMUEL HARBISON.

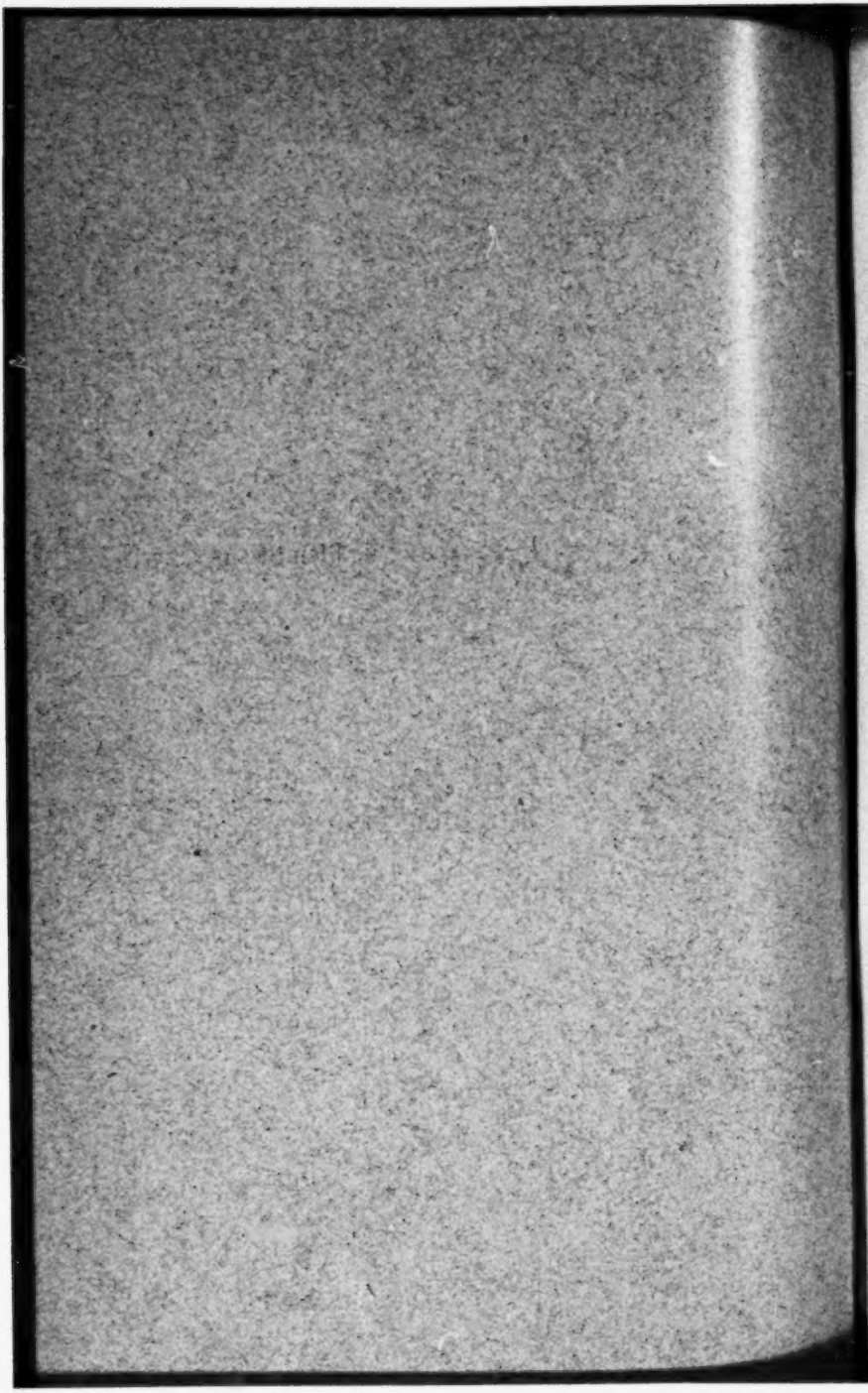
IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

BRIEF FOR PLAINTIFF IN ERROR.

CORNELIUS E. LUCKY,
SOLICITOR FOR APPELLANT.

LUCKY, SANFORD & FOWLER,
OF COUNSEL.

OGDEN BRO'S & CO., PRINTERS, KNOXVILLE, TENN.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 174.

THE KNOXVILLE IRON COMPANY, Plaintiff in Error,

vs.

SAMUEL HARBISON, Defendant in Error.

In Error to the Supreme Court of the State of Tennessee.

STATEMENT OF THE CASE.

This is a suit in equity brought to this Court by a writ of error to the Supreme Court of the State of Tennessee, involving the constitutionality of an Act of the Legislature of Tennessee, passed March 17th, 1899, requiring the redemption in cash of store orders or other evidences of indebtedness issued by employers in the payment of wages due to employees.

The caption and material portions of this Act are as follows:

"AN ACT requiring all persons, firms, corporations, and companies using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay laborers and employes for labor, or otherwise to redeem the same in good and lawful money of the United States in the hands of their employes, laborers, or a *bona fide* holder, and to provide a legal remedy for collection of same in favor of said laborers, employes and such *bona fide* holder.

"Section 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations and companies, using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay their or its laborers and employes, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employe or *bona fide* holder, in lawful money of the United States; *Provided*, The same is presented and redemption demanded of such person, firm,

company or corporation using same as aforesaid, at a regular pay-day of such person, firm, company or corporation to laborers or employes, or if presented and redemption demanded as aforesaid by such laborers, employes, or *bona fide* holders at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order or other evidence of indebtedness to such employes, laborers or *bona fide* holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness; *Provided*, further, Said face value shall be in cash the same as its purchasing power in goods, wares and merchandise at the commissary, company store or other repository of such company, firm, person or corporation aforesaid.

"Sec. 2. Be it further enacted, That any employe, laborer or *bona fide* holder referred to in Section 1 of this Act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in Section 1 of this Act."

Acts of Tenn., 1899, Chap. 11, p. 17.

The original bill was filed in the Chancery Court of Knox County, Tennessee, September 9, 1899. In it the complainant Harbison alleged that he was the *bona fide* holder by purchase in due course of trade of certain specified accepted orders for coal that had been issued by the defendant Company in payment of wages due to its employes; that he had made due demand for their redemption in cash, according to law, which had been refused; that said orders had been issued at the rate of twelve cents per bushel of coal, making the aggregate value of the orders held by him $1,678.00; and that he was entitled to a decree for this amount and interest.

Bill, Rec. pp. 2 to 16.

The answer denied that Complainant was a *bona fide* holder of the orders in question, and alleged that he had purchased them for a grossly inadequate consideration. The answer further set forth that defendant had a regular monthly pay-day, upon which it paid its employes their wages in cash, but that as a mat-

ter of convenience to its laborers, it was accustomed, in the interim, to accept from such of its laborers as desired, coal orders drawn by them for labor previously performed; that these orders were not used by all its employes; that they were drawn by its laborers without any compulsion on its part and without discrimination in the price of coal, but with some incidental profit arising from the increased sale of coal; that the Company would, nevertheless, redeem said orders in cash on a regular pay-day if presented by the laborers themselves, but would not redeem them for cash in the hands of transferees; that the orders in question were drawn voluntarily by its employes and without solicitation on its part and with a positive agreement between the Company and its employes at the time of their acceptance that the laborers would accept coal in payment, and that the Company would not be required to pay anything but coal. The answer denied that any law of the State could infringe upon this right of contract between the Company and its employes, and denied that Complainant was entitled to any recovery against it in the premises.

Answer, Rec pp. 17 to 20.

Proof was taken and the case heard by the Chancellor, who was of opinion that the Complainant was entitled to recover the money-value of the orders, and rendered a decree against the Defendant for $1,702.66 and the costs of the cause, from which decree the Defendant appealed.

Decree, Rec. p. 32.

On appeal the Defendant Company assigned errors insisting that the Chancellor erred in rendering a decree against it for the following reasons:

1. It was not intended by the Act of 1899 to prevent employers from issuing to their employees orders redeemable otherwise than in money, when this was done for the convenience of the employees, at their voluntary request and by agreement entered into after the labor had been performed.

2. That the Complainant was not a *bona fide* holder of the orders within the meaning of said Act.

3. That if it was intended by said Act to render void at the option of the employee a contract voluntarily entered into with his employer, after his labor had been performed, whereby he

agreed to accept an order for coal in payment of wages already earned by him, the Act conflicted with the Fourteenth Amendment of the Constitution of the United States in that it was a deprivation of liberty and property without due process of law.

4. That said Act, if so intended, also conflicted with the Bill of Rights of the Constitution of Tennessee, in that it was a deprivation of liberty and property otherwise than by the law of the land.

Assignments of Error, Rec. pp. 34-36.

The case was heard by the Court of Chancery Appeals of Tennessee, an intermediate Court of reference in equity causes.

The facts as found by that Court are as follows:

"The Defendant is a corporation chartered under Chapter 57, Acts of 1867-'8. The following powers are given by Section 4: 'To purchase, hold and dispose of such real estate, not to exceed seventy thousand acres, leases, minerals, iron, coal, oil, salt and personal property as they may desire, or as they may deem necessary for the legitimate transaction of their business; to mine, bore, forge, smelt, work and manufacture, transport, refine and vend the same. The company to have and enjoy, and exercise, all the rights, privileges and powers belonging to, or incidental to corporations, which may be convenient to carry out any business they are in this Act authorized to engage in.'

"The Defendant has its principal office at Knoxville, where it is engaged in the manufacture of iron. As an incident to this business, it also mines and sells coal. Its mines are located in Anderson County. It works about two hundred employees. It has now and has had for many years a regular pay-day, being that Saturday in every month which is nearest the 20th day of the month. Upon this pay-day each employee is paid in cash the amount then due him, excepting what may be due him from the first of the month up to said pay-day—that is, the Company keeps in arrears with its employees all the time to the extent of their wages for about twenty days' time, so far as concerns the matter of cash payments, but they may collect this sum and all sums that may be due them in coal orders, as stated below. It does not and will not pay cash to its employees for wages at any other time than upon said regular pay-days. Defendant, however, nearly always has on hand in its Knoxville yard a large amount of coal which it sells to all persons who are willing to purchase, whether such persons are its laborers or the public generally. For some time prior to the filing of the bill and at the time the bill was filed the defendant was and had been accumstomed to accept from its laborers after work had been performed orders for coal in the following form:

"'Let bearer have.....bushels of coal, and charge to my account.' .....

"The Defendant's employes are accustomed to sign orders, and in this form they are accepted by a stamp in these words:

"'Accepted.....1899.
"'KNOXVILLE IRON COMPANY.'

"Many of the Defendant's employes have never drawn an order on the Defendant, and many others have used them only in the purchase of coal for themselves; but the Defendant in this way pays off about seventy-five per cent. of the wages earned by its employees. Many of the employees who draw these orders get small wages, ninety cents to one dollar and twenty cents per day, and sell these orders to get money to live on, but those who get the largest wages, $65 to $175 per month, draw more of such coal orders in proportion than do those who get small wages. Defendant has never insisted upon any of its laborers giving any such orders but has been willing to accept such orders when any employe would draw them and ask their acceptance. Defendant, however, sets apart every Saturday afternoon, from one o'clock to five o'clock, for the acceptance of such orders. It makes some profit in accepting said orders in that, instead of paying the wages of its employees in cash, it pays them in coal at 12 cents per bushel, and also, to some extent, its coal business is increased thereby. On the other hand, such orders are a convenience to the Defendant's employees in the way of enabling them to realize on their wages before the regular monthly pay-day and up to that pay-day. When these orders are drawn by Defendant's employees and accepted, Defendant credits itself with said orders on its accounts with the persons so drawing them at the rate of twelve cents per bushel for the amount of coal called for by said orders. There is no proof of an express agreement between the Defendant and its employees that the orders should be paid only in coal, unless the face of the orders shall be construed as setting forth such an agreement. The only proof of any implied agreement to that effect is to be found in such inferences as may be drawn from the face of the orders and from the custom of the Company to issue them and the employes to receive them on other than the regular cash pay-days and the fact that no employe has ever presented one of such orders for redemption in anything else than coal. There is no proof of any compulsion on the part of the defendant upon its operatives, except in so far as compulsion may be implied from the fact that unless Defendants' operatives take their wages in coal orders they must always on each monthly pay-day suffer the Defendant to be in arrears about twenty days—that is, that on the regular pay-day on that Satur-

day which is the nearest the 20th of the month the Defendant will not pay wages, except up to the last day of the preceding month, but will pay in coal orders the whole wages due at the end of each week, and that such is the course of business between the Defendant and its employees. The Complainant purchased six hundred and fourteen of said accepted orders from Defendant's employees and within thirty days from the issuance of each of said orders he presented each of them to the Knoxville Iron Company, Defendant hereto, and demanded that it redeem them in cash, which was refused by Defendant. Complainant is a licensed dealer in securities and sent his agents among the employes of the Defendant to buy these coal orders. They had previously been selling at seventy-five cents on the dollar—that is, before the passage of Chapter 11, Acts of 1899—but he instructed his agents to give 85 cents on the dollar and the orders now in suit were purchased at that price. They amount in dollars and cents to $1,678.00. There is no evidence of bad faith on the part of the Complainant in the purchase of said orders."

Opinion Court of Chanc. App., Rec. pp. 66, 67.

On these facts the Court of Chancery Appeals held that none of Defendant's assignments of error were well taken, and rendered decree against the Defendant and its sureties for the amount of the original decree, interest and costs. From this decree the Defendant appealed to the Supreme Court of Tennessee, and there renewed its assignment of error.

Opinion Court of Chanc. App., Rec. pp. 66-90.
Decree Court of Chanc. App., Rec. p. 90.
Assignment of Error, Rec. p. 91.

The Supreme Court of Tennessee again overruled Defendant's assignments of error and held: 1st. That the Act of 1899 applied to the facts of this case and to the coal orders in question; 2nd. That Complainant was a *bona fide* holder of the orders; and 3rd. That the Act of 1899 did not conflict either with the Fourteenth Amendment of the Constitution of the United States, or with the Tennessee Bill of Rights. A decree was accordingly rendered against Defendant and its sureties for $1,728.28 and costs.

This decree contains the following specific recital and adjudication:

"The Court being of opinion that the Statute of Tennessee, constituting Chapter 11 of the Acts of 1899, whose validity has been drawn in question by the Defendant on the ground that it is repugnant to the Fourteenth Amendment to the Constitution

of the United States * * * is not repugnant * * * to said Amendment to the Constitution of the United States * * * and that said Statute is in all things valid, it is so decreed and adjudged."

Decree, Supreme Court of Tenn., Rec. p. 103.
Opinion, Supreme Court of Tenn., Rec. pp. 91-103.

To review this decree the case has been brought to this Honorable Court by writ of error to the Supreme Court of Tennessee, which was allowed by the Chief Justice of that Court to operate as a supersedeas.

Writ of Error, Rec. p. 105.

SPECIFICATION OF ERRORS.

The Plaintiff in error has assigned error to the proceedings and decree of the Supreme Court of Tennessee, as follows:

"1. The said Court erred in ordering, adjudicating and decreeing that the Statute of the State of Tennessee, constituting Chapter 11 of the Acts of 1899, under which the Defendant in error claimed a money recovery against the plaintiff in error, was not repugnant to the Fourteenth Amendment of the Constitution of the United States and was in all things valid, and in rendering a decree in favor of the Defendant in error and against the Plaintiff in error and its sureties for the sum of $1,728.28 and all the costs of the cause.

"2. The said Court erred, in that the validity of the aforesaid statute of the State of Tennessee, constituting Chapter 11 of the Acts of 1899, having been drawn in question by the Plaintiff in error, on the ground that it deprived the Plaintiff in error of its liberty and property without due process of law, and was repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States, the decision of said Court was in favor of the validity of said Statute, and the aforesaid decree was rendered by said Court under the provisions of said Statute in favor of the Defendant in error and against the Plaintiff in error."

Assignments of Error, Rec. pp. 107, 108.

The third assignment of error is not now relied on and is withdrawn.

The substance of the assignments of error, specifically stated, is that the said Act of 1899 is repugnant to Section 1 of the Fourteenth Amendment for the reason that it deprives the plaintiff in error and all other employers of labor and employees in Tennessee of their liberty and property without due process of law, and that hence the Supreme Court of Tennes-

see erred in adjudging validity of said Act and in rendering a money decree against the Plaintiff in error in accordance with its provisions.

BRIEF OF THE ARGUMENT.

While the amount involved in this particular case is not large, the question here presented is one of the utmost importance, involving as it does for the first time in the history of this tribunal the definite consideration of a large and rapidly-growing class of latter-day legislative experiments, born of a spirit of unrest and agitation, making ever deeper and deeper inroads upon the liberty of private contract, and pregnant—either with good or with evil—for the future of our institutions. Concerning, as it does the relationship of employer and employed, it is of necessity interwoven with the deepest considerations of public policy. In nothing is the tide of paternalistic legislation sweeping higher than in the attempted regulation of the dealings between employers and employees. Experiments are being made upon every side, of every degree of novelty and merit. None of these have yet been presented for the final determination of this Court, and the limit of legislative action in this department is, hence, as yet undefined. The consequences of the decision of this question, which will inevitably determine to a great extent whether the present legislative tendency shall be checked or whether it shall be encouraged in its flood, involves far-reaching consequences whose ultimate results can scarcely be overestimated. If this Act be sustained it will in all probability be followed by much other legislation of the same character; if held unconstitutional the new departure in legislation will be checked.

The questions presented are not easy of solution; they are most complex and intricate, involving not only the proper adjustment and regulation of the relationship between different classes of society, but also the delicate adjustment of the powers of legislative initiative and judicial revision, and the proper solution of the vital question of the extent to which the public interest demands and justifies the infringement of that right of contract and liberty of individual action which has been the mainspring of Anglo-Saxon effort, the impelling force in its centuries of progressive development.

It is clear that a limit must somewhere be placed upon the exercise of legislative interference with the rights of property

and liberty, for if the entire matter be committed to the unrestrained exercise of legislative discretion, caprice or passion, reflecting waves, often violent, frequently transitory, of excited feeling, the Fourteenth Amendment will become a mere nullity, a meaningless and glittering generality, powerless to protect from that against which it was specifically framed to guard. It is equally clear, on the other hand, that some weight should properly be attached to the exercise of legislative discretion, however hasty and ill-considered the legislative action too frequently may be, and that the right of contract should not be permitted to stand as a bar in the pathway of social betterment and an obstruction to such legislation as the higher interest of the community in fact requires. *Salus populi est suprema lex.*

Midway then between legislative inaction upon the one hand, and legislative intermeddling upon the other, lies the true pathway of safety. The question in this case is upon which side of the line does the legislation under discussion fall.

On the one hand it is not necessarily an objection to legislation that it is paternal in its character, for there are some instances in which the State owes a fatherly protection to its wards; on the other hand, legislation is not necessarily justified because it assumes to protect those who are otherwise helpless, when, in fact, it may be a real hindrance to their cause, as well as injustice to others.

It is with a deep sense of the paramount importance of the question here involved, and the far-reaching consequences of its solution, that this argument is presented.

The Plaintiff in error relies upon the following points of law and fact:

I.

Among the rights of liberty and property protected by the provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States that no State shall "deprive any person of life, liberty or property without due process of law," are the right to the acquisition and disposition of property, the right to labor in any lawful employment, and the right to enter into any lawful contract in reference to property or labor.

United States Constitution, 14th Amendment, Section 1.

Slaughter House Cases, 16 Wall (U. S.) 427.
Butchers' Union Co. vs. Crescent City Co., 111 U. S. 746, at 762, 764.
Allgeyer vs. Louisiana, 165 U. S., 578.
Holden vs. Hardy, 169 U. S., 391.
In re Tiberio Parrott, 1 Fed. Rep., 506.
The Stockton Laundry Case, 26 Fed. Rep., 614.
In re Grice, 79 Fed. Rep., 6.
In re Jacobs, 98 N. Y., 98.
People vs. Marx, 99 N. Y., 377.

"Property is everthing which has an exchangeable value, and the right of property includes the right to dispose of it according to the will of the owner. Labor is property, and, as such, merits protection; the right to make it available is next in importance to the rights of life and liberty. It lies, to a large extent, at the foundation of most other forms of property."

Mr. Justice Swayne in Slaughter House Cases, 16 Wall, U. S., 127.

"The right to follow any of the common avocations of life is an inalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen." * * * * "I hold that the liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of the citizens of the United States."

Butchers' Union Co. vs. Crescent City Co., 111 U. S. 746, at 762 and 764, per Mr. Justice Bradley.

"The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

Allgeyer vs. Louisiana, 165 U. S., 589, per Mr. Justice Peckham.

"As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired,

it is safe to say that a State law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision. Indeed, we may go a step further and say that as property can only be legally acquired by contract, a general prohibition against entering into contracts with respect to property, or having as their object the acquisition of property, would be legally invalid."

Holden vs. Hardy, 169 U. S., 391.

"The term liberty, as protected by the Constitution, is not cramped into a mere freedom from physical restraint upon the person of the citizen, as by incarceration, but is deemed to embrace the right of man to be free in the employment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. In the language of Andrews, J., in Bertholf vs. O'Reilly, 74 N. Y. 515, the right to liberty embraces the right of man to exercise his faculties and to follow a lawful avocation for the support of life; and as expressed by Earle, J., in the matter of Jacobs, one may be deprived of his liberty, and his constitutional rights thereto violated, without the actual restraint of his person. Liberty, in its broad sense, as understood in this country, means the right not only of freedom from servitude, imprisonment or restraint, but the right of one to use his faculties in all lawful ways to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation."

People vs. Marx. 99 N. Y., 377.

"The third absolute right, inherent in every Englishman, is that of property, which consists in the free use, enjoyment and disposal of all his acquisitions, without any control or dimunition, save only by the laws of the land."

1 Blackstone's Commentaries, p. 138.

II.

Corporations are "persons" within the meaning of the Fourteenth Amendment, and their property and liberties are protected by its provisions.

Santa Clara Co. vs. Southern Pac., R., 118 U. S., 394.
Pembina Mining Co. vs. Oenna, 125 U. S., 181.
Minneapolis Ry. Co. vs. Beckwith, 129 U. S., 26.
Blake vs. McClung, 172 U. S., 239.

III.

While the constitutional guarantees of liberty and prop-

erty are not intended to restrict the legitimate exercise of the police power of the State, and while the State may, in the exercise of such police power, regulate and restrict the rights of property and liberty, including the right of making contracts, this is the full extent of the power of the State in such regulation and restriction, and every interference by the State with the rights of liberty and property not coming within the legitimate execise of the police power, is a deprivation of liberty and property without due process of law, and is unconstitutional and void.

See authorities above cited under 1st point.

IV.

While the exercise of the police power of the State is not limited to the primary police regulations, in the strict sense of the term, concerning either the public safety, health or morals, and may be exercised, in a sense almost equivalent to the general legislative power of the State, when necessary to the public interest and the welfare of the community at large, yet whenever it is sought to be exercised in matters affecting the public interest outside of those primary police duties of safety, health and morals, in which the public interest is intimately and inseparably connected with that of every individual, the impairment of the individual rights of property and liberty can only be justified when it is shown to be demanded by the public welfare and the interest and well-being of the community at large as distinguished from the well being of a particular class only.

Lawton vs. Steele, 152 U. S., 133.

Thus in a case in which it was held by this Court that a Massachusetts law prohibiting the sale and manufacture of intoxicating liquors is not repugnant to the Constitution of the United States, Mr. Justice Bradley delivering the opinion of the Court, emphasizes the importance of the primary police duties, as follows:

"Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health and property of the citizens, and to the preservation of good order and the public morals. The Legislature cannot, by any contract,

divest itself of the power to provide for these objects. They belong emphatically to the class of objects which demand the application of the maxim, *Salus populi suprema lex*, and they are to be attained and provided for by such appropriate means as the legislative discretion may devise. That discretion can no more be bargained away than the power itself."

Boston Beer Co. vs. Massachusetts, 97 U. S., 992.

Later the distinction between the primary police duties and others of a more general legislative character, is clearly stated by Mr. Justice Brown in the opinion in the case of Lawton vs. Steele:

"It (the police power) is universally conceded to include everything essential to the public safety, health and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance * * * Beyond this, however, the State may interfere wherever the public interest demands it, and in this particular a large discretion is necessarily vested in the Legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. *To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference;* and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals."

Lawton vs. Steele, 152 U. S., 133.

V.

The rights of property and liberty of one class of the community can never be taken away by the Legislature in the exercise of its police power merely to secure financial advantage to another class of the community, however large and deserving such other class may be.

While this proposition is not specifically stated in any decision, it is the result, by a process of exclusion, from all the reported cases on this subject, there being, it is believed, no reported case in which the exercise of the police power has been sustained on the ground that the particular legislation was of financial benefit to one class of the community, as distinct from its safety, morals or health, in which the public interest was directly and vitally concerned.

To put the proposition in another way: The State has a

paramount interest and an inalienable duty in reference to the safety, health and morals of every class of its citizens; and in the protection of the safety, health or morals of any class of its citizens, it may, if necessary, impair individual liberty and property. It has, however, no such vital and paramount interest in the financial condition of every particular class of its citizens and it cannot deprive any of its citizens of their liberty and property merely to enrich another class of its citizens; in short it has no legitimate interest in the transfer of property from one of its citizens to another.

It is evident that if the proposition were ever established that the State could take the property and liberty of one class of its citizens to enrich another, there would be no limit to legislative encroachment upon constitutional guarantees; nor bar to absolute confiscation; no line that could be drawn between partial infringement and the absolute transfer by legislative fiat of the property of one to the pocket of another.

VI.

The right of contract and other rights of liberty and property may be more freely infringed when necessary to protect the public safety, health or morals, than they can for the indefinite purpose of promoting the public welfare in general. This arises from the paramount duty of the State to protect the life, health and morals of its citizens, their preservation constituting an overruling necessity which often justifies the interference with individual rights that would be exempt from infringement upon general and indefinite considerations of public benefit.

Thus in the case of *Holden vs. Hardy, 169 U. S., 397*, in which an Act of the Utah Legislature, which provides that except in cases of emergency the employment of workmen in underground mines should be limited to eight hours per day, was held constitutional by this Court as an exercise of the police power of the State in reference to the public health, Mr. Justice Brown, delivering the opinion of the Court said:

"We have no disposition to criticise the many authorities which hold that State statutes restricting the hours of labor are unconstitutional. Indeed, we are not called upon to express an opinion upon this subject. It is sufficient to say of them that

they have no application to cases where the Legislature had adjudged that a limitation is necessary for the preservation of the health of the employees and there are reasonable grounds for believing that such determination is supported by the facts."

Holden vs. Hardy, 169 U. S., 397.

This distinction between the right of interference with individual rights in the matter of the primary police duties of the State, and more general care of the general welfare of the community, is rendered doubly necessary for the inherent reason that in the very nature of things matters affecting the health, safety and morals, are capable of a fairly precise and exact determination, of sufficient definiteness and certainty to justify interference with private rights for their protection, while matters affecting the general welfare of the community, involving as they necessarily must, the operation of many and complicated economic and social forces, lead inevitably into the field of speculation and uncertainty and to conclusions which are too inexact and doubtful to constitute a ground for the infringement of individual rights protected by fundamental constitutional guarantees.

In short the legislative justification for depriving any citizen of his life and property, must be based upon a *public* benefit that is reasonably certain and not merely upon conjectures and possibilities.

Thus the Supreme Court of Colorado, while stating that the Legislature, where the facts justify discrimination, may in the exercise of its police power, pass health laws affecting only certain classes, citing in support of this proposition the case of Northwestern Fertilizer Co. vs. Hyde Park, 97 U. S. 659, where a law was upheld abstaining a nuisance obnoxious only to part of the community, criticises as follows the doctrine that the State may therefore lawfully pass laws providing for the welfare of any one class of the community, at the expense of others:

"In some cases are found such expressions, (*dicta*, it is true) as that the State has such an interest in each citizen that it may protect him against the consequences of his own rashness, and, upon the theory that the State is made up of the sum of all its parts, it may, for each individual and for his supposed good, prescribe any regulations that are appropriate and suitable for the whole. In other words, this theory is based upon the proposition that each part making up the whole includes each part.

This, in principle, is the same as the theory that would authorize the State to prescribe any regulations it saw fit for keeping a citizen out of its jails, hospitals, or poor-houses, because it is a legitimate function of government to levy and collect taxes for such institutions. The argument in support of such a theory is specious, and while in one sense (but to a limited extent only) true, yet like all other argument from analogy, it is dangerous and should be carefully circumscribed. If the theory is correct the State would be justified in prescribing the most minute details for the regulation of the personal conduct of individual citizens, as to things in no wise affecting the great public interests. Whenever a man fails in business, or loses a fortune by some great calamity, or droughts or floods destroy his crops the Legislature could levy a tax or make an appropriation, and therefrom establish him in business or make good the loss. The practical application of the theory would destroy the fundamental principles upon which our government is founded."

Re Morgan, Col., 1899, 47 L. R. A., 52.

"Powers, the exercise of which can only be justified on this specific ground (namely, under what is usually denominated the police power) and which would otherwise be clearly prohibited by the Constitution, can be such only as are so clearly necessary to the safety, comfort or well being of society, or so imperatively required by the public necessity as to lead to the rational and satisfactory conclusion that the framers of the Constitution could not, as men of ordinary prudence and foresight, have intended to prohibit their exercise in the particular case, notwithstanding the language of the prohibition would otherwise include it."

People vs. Road Co., 9 Mich. 295, per Christiancy, J.

VII.

While there is a presumption in favor of the validity of State legislation, yet the legislative determination is subject to revision by the Courts, and the attempted exercise of police powers will not be upheld if it bears no substantial relation to the welfare of the public at large and arbitrarily interferes with the rights of individuals under the guise of protecting the public interest. The police power cannot be put forward as an excuse for oppression and unjust legislation.

Yick Wo vs. Hopkins, 118 U. S., 356.
Holden vs. Hardy, 169 U. S., 366.
Palmer vs. Tingle, 55 Ohio St., 423.
Guthrie's Fourteenth Amendment, p. 76.

Mr. Justice Brown, in defining the limits of the police power of the State, says:

"To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the necessities of the public generally, as distinguished from those of a particular class, require such interefernce; second, that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. The legislature may not, in the guise of protecting the public interest, arbitrarily interfere with private business, or impose unusual or unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the Courts."

Lawton vs. Steele, 152 U. S., 133, at 137.

"Any regulation of the internal affairs of the State, fairly subserving a valid police purpose, and reasonably exercised for the benefit of the community at large, will be upheld; but if it be arbitrary and have no substantial relations to the health, morals, peace or welfare of the community, it will be nullified."

Guthrie's Lectures on the Fourteenth Amendment, p. 76.

"Contracts and compacts have been entered into between men, tribes and nations during all time from the earliest dawn of history; and the right and liberty of contract is one of the inalienable rights of man, fully secured and protected by our Constitution, and it may be restrained only in so far as it is necessary for the common welfare and the equal protection and benefit of the people. That such restraint of the right and liberty of contract is for the common public welfare, and equal protection and benefit of the people, must appear, not only to the General Assembly, by force of popular clamor or the pressure of the lobby, but also to the Courts; and it must be so clear that a Court of justice, in the calm deliberation of its judgment, may be able to see that such restraint is for the common welfare and equal protection and benefit of the people."

Palmer vs. Tingle, 55 Ohio St., 423, s. c., 45 N. C. 313.

VIII.

The Tennessee Act of 1899, preventing the making of an enforceable contract between employer and employee as to the method of payment of wages, whether due or not due, and requiring the payment of such wages in money in spite of such contract, is an arbitrary attempt, under the guise of protecting the public interest, to interfere with the liberty and property of both the employer and employee, needlessly limiting their right of contract, and equally op-

pressive to both; it bears no substantial relation to the public welfare; it cannot therefore be justified as an exercise of the police power of the State, and is repugnant to the Fourteenth Amendment and void.

The effect of the Act of 1899, as construed by the Supreme Court of Tennessee, is to provide that where an employee, after he has performed services, voluntarily, as a matter of his own convenience, without any constraint upon the part of his employer, draws an order for merchandise in payment for such services and presents the same to his employer, by whom it is accepted, such order shall not be redeemable in merchandise alone as contracted by the parties, but shall, at the option of the holder of said order, be redeemable in money, and that the contract made between the employer and the employee at the time the order was drawn and accepted shall be thus annulled.

In the case at bar it was shown by the proof, and found as a fact by the Court of Chancery Appeals that the "Defendant has never insisted upon any of its laborers giving any such orders, but has been willing to accept such orders when any employe would draw them and ask their acceptance;" that "many of Defendant's employees have never drawn an order on the Defendant, and many others have used them only in the purchase of coal for themselves," and that "such orders are a convenience to Defendant's employees in the way of enabling them to realize on their wages before the regular pay-day and up to that pay-day."

Opinion Court of Chan. App., Rec. pp. 66-67.

The statute in question therefore makes no exception in favor of contracts beneficial to the laborers and voluntarily entered into by them; it absolutely bars all contracts of this character between employer and employee, whether voluntarily made or induced by oppression: it in short, absolutely prevents the making of any enforceable contract between employer and employed in reference to the payment of wages, whether made voluntarily by the employee at his own instance and for his benefit, or induced by compulsion of the employer.

(Perhaps also, under a possible construction of the word "otherwise," as used in the Act in reference to payments made to laborers in payment of wages "or otherwise," any payment of merchandise orders by an employer to his employees, even for an

independent purchase of property outside of matters relating to the employment, would likewise be prohibited.)

The wise and the unwise contract; the just and the unjust employer; the provident and the improvident employee, are all placed in the same category, and come within the same ban; all contracts alike for the payment of wages, without exception, are declared *mala prohibita*.

Manifestly, therefore, this legislation cannot be sustained simply on the ground that there may be some cases of oppression on the part of employers, and that oppressive contracts will thereby be prevented, since voluntary and beneficial contracts also come within its penalties.

The result cannot be different even though many contracts are embraced in the Act which are legitimately the subject of legislation, since if it interferes with a single class of contracts which are proper in themselves and are protected by the Constitution the Act must fall as a whole.

Allgeyer vs. Louisiana, 165 U. S., 578.
Bank vs. Divine Grocery Co., 13 Pickle, 603.

It is respectfully submitted that no consideration of public necessity or public welfare demands this indiscriminate and wholesale assault upon the right of contract.

Public policy, declares Sir George Jessel, in the case of *Printing Co. vs. Sampson, L. R., Eq. Cas., 462*, requires the utmost liberty of contracting.

The right of contract lies at the very basis of civilized institutions; its free exercise has been the indispensable condition and the most efficient cause of continued growth and development; its infringement can only be justified by the plainest demands of an overruling public necessity.

That the Tennessee statute in question infringes upon the right of free contract cannot be denied; upon what consideration of public necessity can it then be justified?

Conceding to this enactment every presumption properly attaching to the exercise of legislative discretion, it is respectfully submitted that it does not fairly serve any valid police purpose and bears no substantial relation to the welfare of the community.

1. *In the first place, even on its face the Act is not passed to further the general welfare of the entire community, but is ostensibly in furtherance of the particular interest of an especial class of the community only, to-wit, the laboring class.*

Even, therefore, if it should accomplish all that were claimed for it, and however desirable it might otherwise be, it would be subject to constitutional objection, as it would fall outside the limits of the valid exercise of the police powers as laid down in *Lawton vs. Steele, supra*, as it would be an interference with the right of contract, not appearing to be required by the interests of the public generally as distinguished from those of a particular class.

2. ***In the second place, the Act relates to none of the primary police duties of the State, in that it does not concern either the health, morals or safety of any portion of the community. It assumes to relate solely to the financial well-being of one class of the community only,*** and is, in its last analysis, an attempt to benefit employees at the expense of employers by compelling the payment of wages in money, on the theory that thereby the employer will lose the profit arising from an indirect sale of merchandise to the laborers and will as a result be compelled to pay higher wages. In short, it is an indirect attempt on the part of the Legislature to fix a rate of wages, which cannot be logically distinguished from an attempt to absolutely fix a rate of wages at a definite limit.

If the legislation may lawfully provide for the payment of wages in money, it is only one step further, and that too a very short step, to declare that, in order to promote the general welfare, all employers shall pay an arbitrary and fixed rate of wages, to be fixed by statute.

The Act therefore, cannot be justified as a legitimate exercise of the police powers of the State since that power can never be invoked merely to enrich one class of the community, whether they be employees or employers, at the expense of another in a manner affecting neither the health, morals or safety of the community or the welfare of the community as a whole. If the right of contract can be destroyed for such financial benefit to one class only, there is no limit short of the legislative confiscation of private property for the purpose of making a more equal distribution of wealth. Yet, however desirable an equal distribution of wealth might be, it is clearly a consummation beyond the power of the State Legislature.

3. ***In the third place, while the Act is sought to be supported as a financial benefit to the laboring class, it is in reality***

not a financial benefit to the laboring class as a whole, and as a matter of fact will only give a temporary financial benefit to one section of the laboring class only, to-wit: the improvident, and to the usurers who fatten upon them, and will give even this temporary assistance at the expense of the families of the improvident laborers. Of course, if the law is enforced, its result will be to prevent the issuing of coal orders and to limit the payment of wages to the monthly pay-day.

Under the present system where orders are issued in payment of wages every week, especially general merchandise orders, the laborers have two distinct advantages. In the first place, they get their wages much sooner than they could otherwise be paid under the cash basis, and second and chiefly, a very large proportion of wages, as the Court will take judicial knowledge, finds its way to the house wives and is used by them in the purchase of goods and supplies for the benefit of the family, while on the contrary, where the payment of the wages is deferred to the end of the month and a large cash payment made at one time, the amount of wages of the improvident class of laborers that is wasted away in dissipation is greatly increased. Thus the burden falls most heavily upon the families of the improvident, on the wives and children of those who are especially subject to temptation and who are most prone to waste their cash wages in this manner. On the other hand, very few merchandise orders ever find their way into the bar-keeper's till.

The argument may be thus stated:

So far as the provident and careful workman is concerned, the Act is ineffective one way or the other. If he asks for orders in payment of his wages in advance, he does it purely as a matter of convenience and benefit to himself and his family and will not sell them at any great discount.

To the improvident workman on the other hand, while the temporary effect of the Act is to enable him to sell for cash a few orders at an advanced rate, and to allow a few parties, as the Complainant did in this cause, to profit by their purchase at a rate of discount equal to 180 per cent per annum, yet the ultimate effect, if the law is held constitutional, will be to cut off this anticipation of wages in orders and thus deprive the families of the improvident of a large per cent. of the wages and to deflect it into channels of waste and dissipation.

No reason of public policy has been cited in the argument

that justifies this arbitrary interference with individual rights; while on the contrary, the consequences of the Act, even if effective, will be nothing but hardship as above shown.

In making this argument, the plaintiff in error, while not admitting that it is lacking in interest in the welfare of its employees, still does not assume to represent them in this case or to base its argument solely upon the hardships to them, but it does conceive that the natural and inevitable consequence of the Act, and especially its effect upon the very class whom it is designed to protect, is a legitimate subject of inquiry addressing itself to the Court in the determination of the question as to whether or not there is any public benefit to be obtained which will justify this extraordinary legislation. It is to throw light upon this question alone that this argument is advanced.

4. ***In the fourth place the legislation in question is futile and unconstitutional for the reason that it must of necessity be unavailing.*** Its only object can be to attempt to enforce a higher rate of wages through payment in cash instead of merchandise. Its framers, however laudable their motives, overlooked, however, the fundamental fact that wages are necessarily the result of the operation of economic laws, depending, in the last analysis, upon the law of supply and demand, which regulates the rate of wages as inevitably as it regulates the rate of interest upon capital. With a given competition to which the industries of the State are subjected, in the struggle for existence in the markets of the world, in conflict with the industries of other States and other countries, the rate of wages cannot be permanently fixed higher than the result of this competition will justify, so that even if, through the operation of this present law or any other similar law, the rate of wages should be temporarily raised above what economic laws would justify in the face of this competition, the inevitable result must be, to that extent, a cessation of industry and driving of both capital and labor from the domain of the State.

However desirable it may be to raise the rate of wages, it is a futile effort upon the part of the Legislature of any one State to endeavor, single-handed, to accomplish this result, and the endeavor can only result in the permanent injury to its industries and in inevitable disaster both to those who employ labor and to those who are employed. Even useless and unnecessary hampering of industry will inevitably affect injuriously the laborers, as well as the employers.

The Act in question is therefore obnoxious to the Constitution for four grounds:

1. It is a special legislation attempting to affect the welfare of one class only.

2. It attempts to affect the welfare of this class neither in health, morals or safety, and only in the matter of finance.

3. It really affects only a sub-class of that class, namely, the improvident, and while it may benefit this sub-class and their usurious friends temporarily, it results in the long-run in the injury of the entire laboring class, and is especially harmful to the families of the improvident.

4. It is a futile attempt to change the economic laws that can accomplish no result except to injure all the industries of the State, and all who gain employment or profit through these industries.

IX.

The unconstitutionality of the legislation in question is established by the overwhelming weight of authority.

The regulation of the relationship of employer and employee has been for several years a favorite subject of legislative interference, and repeated attempts have been made to enforce this and similar legislation, but almost without a dissenting voice the Courts of the land, in spite of the natural and proper inclination to uphold State legislation, recognizing the far-reaching and injurious consequences of such legislation, have been constrained to declare it unconstitutional and refuse it judicial sanction.

The authorities can be most profitably considered in three classes:

1st. Cases involving the precise question of the right of the Legislature to require the payment of wages in money;

2nd. Similar cases involving the question of the right of the Legislature to regulate in other respects relation of employer and employee, and interfere with the right of contract between them, and

3rd. Other cases involving the question of legislative interference with the rights of liberty and property, especially that of private contract.

An examination of these several classes of cases in their order will establish the following propositions:

First. Under the overwhelming weight of authority, statutes which attempt to enforce the payment of wages in money, and take away from the employer and laborer the right of contracting otherwise, are invalid and unconstitutional.

There are seven reported cases involving this precise question, in addition to the case now under review.

1. In a Pennsylvania suit brought by an employee to recover money on an order drawn by him on his employer, payable in coal, the plaintiff relied on an Act of the Pennsylvania Legislature, passed in 1881, which provided that all orders given by employers engaged in manufacturing, to their workmen, payable in goods, or anything but money, should be void. The Supreme Court held the sections of the Act containing these provisions to be void, saying:

They "are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the Legislature to do what, in this country, cannot be done; that is, to prevent persons who are *sui juris* from making their own contracts. The Act is an infringement alike of the right of the employer and the employee. More than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive to his rights as a citizen of the United States. He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal, and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges, and consequently vicious and void."

Godcharles vs. Wigeman, 113 Penn., 431, s. c., 4 Cent. Rep. 887; 6 Atl. Rep., 354.

2. Again it was subsequently held that the requirement of the Pennsylvania Act of 1891, providing "that miner's wages shall be paid in lawful money of the United States is unconstitutional so far as it attempts to preclude miners from making valid contracts to accept other than money in payment of their wages."

Showalter v. Ehlan, 5 Pa. Super Ct., 242; cited in 4 Gen. Digest, p. 350.

3. An Act passed by the Legislature of West Virginia in 1887, making it a misdemeanor for any person, firm, corporation or association engaged in mining or manufacturing coal or other

minerals, or in other kind of manufacturing, to issue for the payment of labor any order or other paper unless it was made payable to the employee or bearer and purported to be redeemable within a period of ninety days for its face value in lawful money of the United States, with interest, was also declared unconstitutional. The Court in delivering its opinion said:

"A person living under the protection of the United States Government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which he may see fit, and, as incident to this, has the right to labor or employ labor, make contracts in respect thereof, upon such terms as may be agreed upon by the parties; to enforce all lawful contracts; to sue and give evidence, and to inherit, lease, purchase, sell and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitute the essential distinction between freedom and slavery; between liberty and oppression. These principles have been fully recognized and announced in many decisions of the Supreme Court of the United States and other Courts * * * * * The vocation of an employer, as well as that of his employee, is his property. Depriving the owner of property of one of its attributes is depriving him of his property under the provisions of the Constitution. (People vs. Otis, 90 N. Y., 48). The right to use, buy and sell property, and contract in respect thereto, including contracts for labor—which is, as we have seen, property—is protected by the Constitution. If the Legislature, without any public necessity, has the power to prohibit or restrict the right of contract between private persons in respect to one lawful contract or business, then it may prevent the prosecution of all trades, and regulate all contracts."

State vs. Goodwill, 33 W. Va., 179, s. c.; 6 L. R. A., 621, (1889).

4. Subsequently an Act passed by the West Virginia Legislature in 1891, making it a misdemeanor for any corporation, company, firm or person, to issue to any employee in payment of wages due, or as advance for wages not due, any scrip or evidence of indebtedness payable otherwise than in lawful money, which was passed at a time when legislation of this character was all the fashion, was again presented to the Supreme Court of West Virginia, and the Court then stood three for and three against the constitutionality of the Act; so that under a provision requiring a majority of the Court to declare an Act unconstitutional the validity of the Act was thus sustained.

Peel Splint Co. vs. State, 36 W. Va., 802, s. c.; 17 L. R. A., 385 (1892.)

5. An Act passed by the Legislature of Missouri, in 1889, made it a misdemeanor for any corporation, person or firm engaged in manufacturing or mining to issue for the payment of labor any order or other evidence of indebtedness payable otherwise than in lawful money of the United States, unless the same was negotiable and redeemable at its face value in cash or in supplies at the option of the holder. This Act was held by the Supreme Court of Missouri to be unconstitutional, the ground of the decision being thus stated by the Court in its opinion:

"Liberty, as we have seen, includes the right to contract as others may, and to take that right away from a class of persons following lawful pursuits is simply depriving such persons of a time honored right which the constitution undertakes to secure to every citizen. Applying the principle of constitutional law before stated, we can come to no other conclusion than this, that these sections of the statute are utterly void. They attempt to strike down one of the fundamental principles of constitutional government. If they can stand, it is difficult to see an end to such legislation, and the government becomes one of special privileges instead of a compact 'to promote the general welfare of the people.' We place our conclusion on the broad ground that these sections of the statute are not 'due process of law' within the meaning of the constitution."

State vs. Loomis, 115 Missouri, 307, s. c.; 21 L. R. A., 789, at p. 804 (1892.)

6. A statute passed by the Legislature of Indiana in 1887 provided that all employees engaged in mining or manufacturing "shall be paid at least once in every two weeks in lawful money of the United States, and that any contract to the contrary, or to waive the provisions of the statute, should be null and void." This statute was held valid as applied to an *antecedent* contract entered into by the employee prior to his employment by which he waived in advance the provisions of the statute, but the Court expressly stated that it did not "preclude parties from making an accord and satisfaction after wages have been earned and services rendered," the implication being that, if such had been the effect, it would be unconstitutional. The case, therefore, is strong authority against the constitutionality of the Act of 1899, as applied to the facts in the case at bar, where it is held to prevent such voluntary contract as to the mode of payment of wages made after the services have been performed.

Hancock vs. Yaden, 121 Indiana, 366, s. c.; 6 L. R. A., 576.

7. Under an Act of the Kansas Legislature, passed in 1897, it was made unlawful for any corporation or trust employing ten or more persons, or its agent, to pay wages, due or to become due, in any scrip, order or other evidence of indebtedness, the Act requiring wages to be paid only in lawful money of the United States, or bank check or draft, and declaring void all contracts or agreements in violation of the Statute. The manager of a corporation was convicted of a violation of the Statute in having delivered to an employee in payment of wages a store order for which the laborer had voluntarily applied between pay-days, although by waiting until the regular pay-day he would have received his wages in money. On appeal to the Supreme Court it was held that the Act could not be sustained as an amendment or corporation charters, and that it was in violation of the Fourteenth Amendment in that it made an arbitrary and unauthorized classification, and also on the broad ground that it arbitrarily interfered with the right of contract between persons *sui juris*. Smith, J., delivering the opinion of the Court said:

"However much the employed might profit by the necessities of the employer desiring to exchange property for labor at a value advantageous to the former, all such beneficial agreements are prohibited by this law. In short, such legislation infringes upon natural rights and constitutional grants of liberty. It treats the laborer as a ward of the government, and discourages the employment of those talents which lead to success in the fields of commercial enterprise. Persons *sui juris* need no guardians. Those who seek to put a protector over labor reflect upon the dignity and independence of the wage earner, and deceive him by the promise that legislation can cure all the ills of which he may complain. *Such legislation suggests the handiwork of the politician rather than the political economist* * * *

"It has been sought by some judges to justify legislation of this kind upon the theory that, in the exercise of police power, a limitation necessary for the protection of one class of persons against the persecution of another class, may be placed upon freedom of contract. As between persons *sui juris*, what right has the Legislature to assume that one class has the need of protection against another? In this country the employee today may be the employer next year, and laws treating employees as subjects for such protective legislation, belittle their intelligence and reflect upon their standing as free citizens. It is our boast that no class distinctions exist in this country. An interference by the Legislature with the freedom of the citizens in making contracts, denying to a part of the people, possessing

sound minds and memory, the right to bargain concerning the equivalent they may desire to receive as compensation for their labor, is to create or carve out a class from the body of the people, and place that class within the pale of protective laws which invidiously distinguish them from other free citizens; thus dividing by arbitrary fiat equally free and intelligent people into distinctive classes or grades, the one marked by law as the object of legislative solicitude, the other not. This discrimination has been justified by writers defending the doctrine of paternalism, and by some judges, upon the asserted fact that labor is constantly engaged in an unequal contest with capital and that the former must be reinforced by the legislative power of the State, to prevent its overthrow in the conflict.

"Freedom of action—liberty—is the corner-stone of our governmental fabric. Laws which infringe upon the free exercise of the right of a workingman to trade his labor for any commodity or species of property which he may see fit, and which he may consider to be the most advantageous, is an encroachment upon his constitutional rights, and an obstruction to his pursuit of happiness. Such laws as the one under consideration classify him among the incompetents and degrade his calling. The proportion of lawful money in circulation is small, compared with the value of other property in the United States. Accumulated wealth, much or little, is represented in a very small part by money. *To say that a free citizen can contract for or agree to receive in return for his labor one kind of property only, and that which represents the smallest part of the aggregate wealth of the country, is a clear restriction of the right to bargain and trade, a suppression of individual effort, a denial of unalienable rights.*"

State vs. Haun, Supreme Court of Kansas, Dec. 9, 1899, s. c.; 47 L. R. A., 369 at 374 and 375.

It will be noted that in all of the foregoing cases the opinions of the court were not based merely upon the fact that they were class legislation, but were based either entirely or as one of the grounds of the decision, upon the broad principle that such legislation arbitrarily infringed the fundamental rights of property, liberty and contract, and were in violation of the constitutional provisions guaranteeing the protection of such rights.

To summarise: *It will be seen that the right of the Legislature to require the payment of wages in money has been passed upon in seven reported cases, in addition to the case at bar. In five of these cases, two from Pennsylvania, one from West Virginia, one from Missouri and one from Kansas, such legislation has been held unconstitutional as violating the right of*

contract; in one case from West Virginia, the court was evenly divided, and in one from Indiana the court, in upholding the validity of the act, specifically limited its application to the prohibition of antecedent contracts entered into before the employment. The Supreme Court of Tennessee stands single and alone in maintaining the constitutionality of such legislation by affirmative opinion. Thus the overwhelming weight of authority is in support of the proposition that such legislation, when applied to the facts in the case at bar, is unconstitutional and void.

It is insisted in argument on behalf of the complainant that the foregoing cases are distinguishable from the case at bar in that in most of them the payment of wages otherwise than in money was prohibited under penalty, while in the case under discussion such payment is not prohibited, but the law, it is said, merely regulates such payments and provides that when made in any evidence of indebtedness they shall be redeemable in money. Manifestly, however, this is a distinction without a difference in principle.

The Tennessee Act in substance attempts to make a new contract for the parties, and instead of enforcing their contract, declares that it shall not be enforced.

When the laborer draws a merchandise order on his employer, and it is accepted by the employe and delivered to the laborer in payment of wages, their contract is that the laborer will accept this merchandise in payment of his wages, but the Tennessee law attempts to prevent the enforcement of this contract as made and to say that although the contract calls for the payment of the wages in merchandise they shall be payable in money at the subsequent option of one only of the contracting parties, the laborer, or his assignee.

If the Legislature has no power to prohibit a contract providing for the payment of wages otherwise than in money, it clearly has no power to change the contract by providing that it cannot be enforced according to the terms of the contract. A law preventing the enforcement of the contract according to its terms as agreed upon by the parties, is, in principle, as much a prohibition of the right of the parties to contract as if it were in its terms an absolute prohibition. To prohibit the enforcement of the contract as the parties have made it, and control or

modify its terms, is equivalent to a prohibition of the contract itself. A contract that is not enforceable is not a valid contract; to declare it not enforceable is to declare it invalid and prohibit it.

Second. Similar attempts of State Legislatures to arbitrarily interfere with the relationship of employer and employee in other matters, and to deprive them of the right of mutual contract, have also been held unconstitutional by a well nigh unbroken line of authority.

The following cases establish this proposition:

1. An Act of the Legislature of Illinois requiring the owner of every coal mine to furnish a scale upon which all coal should be weighed, which should be subject to inspection by the miner and all other parties interested, providing for punishment by fine or imprisonment in case of violation, and declaring void all contracts dispensing with the weighing of coal in such manner void, was held by the Supreme Court of Illinois to be void, because it was not the law of the land.

Miller vs. People, 117 Ill. 294, s. c., 5 W. R., 15.

2. An Act of the Legislature of Illinois, declaring it a misdemeanor for any employer engaged in mining or manufacturing to be interested in any store or scheme for furnishing of supplies of any kind to his employees, was declared by the Supreme Court of Illinois to be unconstitutional, the particular ground upon which the decision was based being that the Act was partial legislation, in that it was made unlawful for certain individuals only to run a store in connection with their business. The Court, however, quoted with approval the language of other Courts to the effect that the Legislature had no power to deprive a person of the right to follow a lawful business and to make valid contracts as an incident thereto.

Frorer vs. People, 141 Ill. 171, s. c., 16 L. R. A. 492 (1892).

3. An Act of the Illinois Legislature providing that the wages of coal miners, if based on the quantity of coal mined, should be computed on the whole quantity before screening, and that all coal should be weighed in the cars before being dumped into screens or chutes, and making a violation of said Act a misdemeanor, was held by the Supreme Court of Illinois to be void, on the ground, as stated in the syllabus, that it was "an attempt

to take away, without due process of law, the property right of contracting in respect to such wages."

Ramsey vs. People, 142 Ill. 380, s. c. 17 L. R. A., 853.

4. An Act of the Illinois Legislature which required every manufacturing, mining, quarrying, lumbering, mercantile, street, electric and elevated railway, steamboat, telegraph, telephone, and municipal corporation, incorporated express company and water company, to pay the wages of its employees weekly, was held by the Supreme Court to be unconstitutional. In the course of its opinion the Court said:

"Property in its broader sense, is not the physical thing which may be the subject of ownership, but is the right of dominion, possession and power of disposition which may be required over it. And the right of property preserved by the constitution, is the right not only to possess and enjoy it, but also to acquire it in any lawful mode, or by following lawful industrial pursuits which the citizen, in the exercise of the liberty guaranteed, may choose to adopt. Labor is the primary foundation of all wealth. The property which each one has in his own labor is the common heritage. And, as an incident to the right to acquire other property, the liberty to enter into contracts by which labor may be employed in such a way as the laborer shall deem most beneficial, and of others to employ such labor, is necessarily included in the constitutional guarantee."

Braceville Coal Co. vs. People, 147 Ill. 66, s. c. 23 L. R. A., 340, (1893).

5. An Act of the Illinois Legislature, passed in 1887, as amended by an Act of 1891, required all coal operators in the State who paid their miners by weight to provide accurate scales for the weighing of all coal hoisted or delivered from their mines, and further required that all coal should be accurately weighed and a record of the same should be kept for the inspection of the miners, was also declared unconstitutional by the Supreme Court, the Court, among other things, saying:

"It seems that a law which deprives men engaged in the business of mining from contracting with each other for the purpose of ascertaining the weight of coal mined, or the amount due them, in any manner mutually satisfactory, cannot be sustained. That such is the effect of this law is the contention of counsel for the people, and it is only upon the assumption that the law does so control the power to contract that a conviction could have been had in this case; for, as already seen, the parties had contracted

otherwise. The Act takes away the freedom of contracting by the parties for the ascertainment of the weight of coal, except by a certain method, and, in our opinion, it is unconstitutional."

Harding vs. People, 160 Ill. 459, s. c. 32 L. R. A., 455, (1896).

6. A Pennsylvania statute which required monthly payment of wages by mining or manufacturing companies was held unconstitutional so far as it amounted to making a contract between parties against their will, and it was further held that the Act could give no right to the payment of wages before the time agreed upon by the parties by reason of a provision that a contract for payment otherwise than according to the statute should be void.

Bauer vs. Reynolds, 3 Penn. Dist. Rep., 502.

7. A statute which declared it to be unlawful to screen coal before it was weighed and credited to the miner, when such miner was paid by weight or quantity, was held unconstitutional.

Commonwealth vs. Brown, 6 Penn., Dist Rep., 773.

8. An Act of the Legislature of West Virginia, which made it a misdemeanor for any employers engaged in mining or manufacturing, to sell any merchandise or supplies to any employee at a greater per cent. of profit than to other customers buying for cash and not employed by them, was held by the Supreme Court to be unconstitutional, the Court saying, in the course of its opinion:

"It is an attempt on the part of the Legislature to do what, in this country, cannot be done; that is, to prevent persons who are *sui juris* from making their own contracts. The Act is an infringement alike of the rights of the employer and the employee. More than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States. * * * * * * * The ground on which this Act is condemned is, that it is class legislation, and an unjust interference with the rights, privileges and property of both the employer and the employee, and places upon both the badge of slavery by denying to one the right of managing his own private business, and assuming that the other has so little capacity and manhood as to be unable to protect himself or manage his own private affairs."

State vs. Fire Creek Coal Co. 33 (W. Va.) 188, s. c., 6 L. R. A., 359.

9. An Act of the Missouri Legislature, which provided that it should be unlawful for an employer to prohibt an employee from joining, or to require an employee to withdraw from, a trade or labor union, or other lawful organization, was held to be in violation of that article of the Missouri constitution which declared that no one should be deprived of life, liberty or property without due process of law, and of Section 1 of the Fourteenth Amendment to the Constitution of the United States. The Court said:

"Here, the law under review declares that to be a crime which consists alone in the exercise of a constitutional right, to-wit: that of terminating a contract—one of the essential attributes of property, indeed property itself, under preceding definitions. * * * * * * We deny the power of the Legislature to do this, to brand as an offense that which the Constitution designates and declares to be a right, and therefore an innocent act; and consequently we hold that the statute which professes to exert such a power is nothing more nor less than a legislative judgment, and an attempt to deprive all who are included within its terms of a constitutional right without due process of law."

State vs. Julow, 129 Mo. 163, s. c., 31 S. W. Rep. 781, (1895).

10. In a case involving the constitutionality of an Arkansas statute, providing that when any person or company engage in the operation or construction of a railroad, or any contractor or sub-contractor of such person or company, should discharge an employee, the wages of such employee should immediately become due, the Supreme Court considered, in an elaborate review of the authorities, the extent to which a Legislature may interfere with the making of private contracts. Among other things, the Court said:

"*When the subject of contract is purely and exclusively private, unaffected by any public interest or duty to persons, to society, or government, and the parties are capable of contracting, their is no condition existing upon which the Legislature can interfere for the purpose of prohibiting the contract or controlling the terms.*"

The Act was, therefore, held to be unconstitutional as to persons other than corporations, but as to corporations was held valid on the ground that by constitutional provision, the Legisla-

ture was vested with authority to annul their charters, and the Act operated only as a charter amendment.

Leep vs. St. Louis, etc., Ry. Co., 58 Ark 407, s. c., 23 L. R. A., 264.

11. A Rhode Island statute requiring corporations to pay the wages of their employees weekly was not in conflict with the Fourteenth Amendment, because: first, corporations were not embraced in the word "person" as used in said amendment, and, second, the Legislature had the power to amend the charters of corporations of that state.

State vs. Brown & Sharp M'f'g Co., 18 R. I.——, s. c., 17 L. R. A., 856.

On the first point the Court was of course clearly wrong.

12. So a similar Maryland statute was held constitutional as to corporations on the ground that such an Act was not an improper exercise of the legislative power to make charter amendments.

Shaffer vs. Union M. Co., 55 Md., 74.

13. While the Supreme Court of Massachusetts rendered an opinion to the Legislature that it was within its constitutional power to extend the application of the law relative to the weekly payment of wages by corporations to private individuals and partnerships, yet it is to be noted that in their opinion the Supreme Court apparently considered the question only with reference to the Massachusetts Constitution which grants more comprehensive power to the Legislature than is found in most state constitutions, and expressly extends such power to "all manner of wholesome and reasonable orders, laws, statutes and ordinances" and does not in terms make any provisions as to freedom or liberty of contract, and the question was not discussed with reference to the effect of the Fourteenth Amendment of the Constitution of the United States.

Re House Bill 1230, 163 Mass., 587; s. c. 28 L. R. A., 344 (1895).

14. An Act of the Legislature of Massachusetts forbidding an employer to impose a fine upon or to withhold wages from an employee for any imperfections in weaving was held by the Supreme Court of Massachusetts to be a violation of the constitutional provision which enumerated under the natural and inalien-

able rights of man the rights of acquiring, possessing and protecting property. The Court said:

"The right to acquire, possess and protect property, includes the right to make reasonable contracts, which shall be under the protection of the law. * * * * * * The right to employ weavers and to make proper contracts with them is therefore protected by our Constitution; and a statute which forbids the making of such contracts, or attempts to nullify them or impair the obligation of them, violates fundamental principles of the rights which are expressly recognized in our constitution."

Commonwealth vs. Perry, 155 Mass., 117; s. c. 14 L. R. A., 325 (1891).

15. An Act of the Legislature of Illinois providing that no females shall be employed in any factory or workshop more than eight hours in any one day, or forty-eight hours in any one week, was held unconstitutional by the Court on the grounds: 1st, of its partiality; 2nd, that it arbitrarily restricted the employer and the employee and deprived them of both a liberty and a property right without due process of law. The Court in delivering its opinion said:

"But aside from its partial and discriminating character, this enactment is a purely arbitrary restriction upon the fundamental right of the citizen to control his or her own time and faculties. It substitutes the judgment of the Legislature for the judgment of the employer and employee in a matter about which they are competent to agree with each other. It assumes to dictate to what extent the capacity of labor may be exercised by the employee and takes away the right of private judgment as to the amount and duration of the labor to be put forth in a specified period. Where the Legislature thus undertakes to impose an unreasonable and unnecessary burden upon any one citizen or class of citizens, it transcends the authority intrusted to it by the constitution, even though it imposes the same burden upon all other citizens or classes of citizens. *General laws may be as tyrannical as partial laws.* A distinguished writer upon constitutional limitations has said that general rules may sometimes be as obnoxious as special if they operate to deprive individual citizens of vested rights, and that, while every man has a right to require that his own controversies shall be judged by the same rules which are applied in the controversies of his neighbors, *the whole community is also entitled, at all times, to demand the protection of the ancient principles which shield private rights against arbitrary interference, even though such interference may be*

under a rule impartial in its operation. Cooley, Const. Lim., 5th Edition, top p. 434, 435."

Ritchie vs. People, 154 Ill. 98; s. c. 29 L. R. A. 79, at 83, (1893).

16. A municipal ordinance making it a misdemeanor for any contractor with the city to contract for more than eight hours labor a day from any one person, was held by the Supreme Court of California to be unconstitutional and void, as "a direct infringement of the right to such persons to make and enforce their contracts."

In re Kubach, 85 Cal. 274; s. c. 9 L. R. A., 482, (1890.)

17. An Act of the Nebraska Legislature providing that for all classes of laborers except those engaged in farm or domestic labor, a day's work should not exceed eight hours, was held unconstitutional by the Supreme Court of Nebraska on two grounds: 1st, as special legislation against farm and domestic laborers; 2nd, as denying to the parties the constitutional right to contract with reference to compensation for services. The Court in delivering its opinion said:

"The legislation attempted cannot be defended as a police regulation, as was attempted in argument; for under pretense of the exercise of that power the Legislature cannot prohibit harmless acts which do not concern the health, safety and welfare of society."

Lowe vs. Reese Printing Co., 41 Neb. 127; s. c. 24 L. R. A., 702, (1894.)

18. A Massachusetts statute prohibiting all persons under the age of eighteen, and all women from laboring in any manufacturing establishment, more than sixty hours a week was held valid under the Constitution of that State as a health or police regulation.

Commonwealth vs. Hamilton Mfg. Co., 120 Mass., 383 (1876).

19. A Kansas statute providing that where miners were employed at the ton or other quantity rates, the output should not be passed over any screen before the same had been weighed and credited to the miner, was held constitutional as an Act regulating weights and measures for the purpose of furnishing statistical records of the coal trade, and on the express ground that

when properly construed it did not require payment of wages to be made on the basis of the screened product, or in any way affect the right of contract between employer and employee, or prevent them from making such agreement as they chose as to the basis of compensation, the reasoning of the Court being based on the assumption that if, properly construed, it would have had the effect of abridging the freedom of contract and regulate the payment of wages, it would have been unconstitutional. Smith, J., indeed dissented upon the precise ground that the Act did bear this construction and was hence an unconstitutional regulation of the right of contract not justified by any public necessity. This case therefore is, in fact, an authority in support of the proposition that a screen statute passed to regulate wages is unconstitutional.

State vs. Wilson, Sup. Ct. of Kansas, (1899); 47 L. R. A., 71.

20. In response to an inquiry from the Colorado House of Representatives as to the constitutionality of a bill constituting eight hours a legal day's work in mines, factories and smelters, the Supreme Court of Colorado replied that it was not competent for the Legislature to impose especial restrictions upon the mining, manufacturing and smelting industries of the State, and that the Act "violated the right of parties to make their own contracts,—a right guaranteed by our bill of rights."

Re Eight Hour Bill, 21 Colo., 29, s. c., 39 Pac. Rep. 328.

21. Subsequently in answer to an inquiry as to the power of the Legislature to pass a "coal-screening bill," this legislation was likewise condemned by the Supreme Court of Colorado, as hostile to the Constitution of the State.

Re House Bill No. 202, 21 Colo. 27; s. c., 39 Pac. Rep. 431.

22. Under the Constitution of Utah it is made mandatory upon the Legislature to pass laws to provide for the health and the safety of the employees in factories, smelters and mines. An Act was passed by the Legislature making the period of employment of workmen in underground mines, smelters and refineries, eight hours per day, except in cases of emergency, and making a violation of the statute a misdemeanor. It was held by the Su-

preme Court of Utah, in three cases, that this law was constitutional, both as to underground mines and as to smelters.

Holden vs. Hardy, 14 Utah, 71; s. c., 37 L. R. A. 103. State vs. Holden, 14 Utah, 93; s. c., 37 L. R. A., 108. Short vs. Bullion &c., Mining Co., (Utah,) 45 L. R. A., 603.

23. The first of these cases, relating to the employment in underground mines, was carried to the Supreme Court of the United States, and was there held by a majority opinion, Mr. Justice Brewer and Mr. Justice Peckham dissenting, to be constitutional as a valid exercise of the police power of the State, on the specific ground that there is reasonable ground for belief that underground mining, when too long performed, is injurious to the health, but the Court reaffirmed in its opinion the general principle that the right to make proper contracts is protected by the Fourteenth Amendment, and did not assert the constitutionality of eight-hour laws in general; on the contrary, as above shown, specifically stating in the opinion that the Court had "*no disposition to criticize the many authorities which hold that State statutes protecting the hours of labor are unconstitutional.*"

Holden vs. Hardy, 169 U. S., 366.

24. At a later date a similar statute of the State of Colorado, limiting employment in underground mines, smelters and ore refineries to eight hours per day was held unconstitutional by the Supreme Court of Colorado, as being in violation of a provision of the Colorado Constitution, guaranteeing liberty and the right to acquire, possess and protect property.

Re Morgan, Sup. Ct. of Colorado, July 17, 1899, 47 L. R. A., 52.

25. A statute of the State of Washington forbidding the employment of women in any saloon or other place where intoxicating liquors were sold, was held to be a valid exercise of the police power of the State and constitutional.

In re Considine, 83 Fed. Rep., 157.

26. A statute of Ohio prohibiting the making of a voluntary contract between a railroad company and its employee, whereby the latter agrees, in consideration of certain benefits from the company, that if he elects to accept benefits when injured, he

will not look to the company for damages for the injury, was held unconstitutional.

Cox vs. Pittsburgh, &c. Ry. Co., 10 Ohio N. P. (Com. P), 213.

27. A statute passed by the Legislature of California, requiring all corporations doing business in the State to pay their employees, at least once a month, wages earned during the preceding month, and declaring that a violation of such requirements shall entitle an employe to a lien for his wages on the corporation's property, taking precedence of all other liens, except recorded mortgages or deeds of trust, and that such employe shall be entitled to an attachment and a reasonable attorney's fee in case of suit to collect such wages or enforce such lien, and that an unrecorded deed shall be no defence to such suit, was held constitutional by United States Circuit Judge Morrow.

Skinner vs. Garnett Gold Mining Co., 96 Fed. Rep., 735.

28. Subsequently this same statute was held unconstitutional by the Supreme Court of California on the ground that it denied corporations equal protection of the laws, and also on the broad ground of interference with the right of contract. Cooper, J., delivering the opinion of the Court, and referring to the provision of the Act in regard to monthly payment of wages and to another provision of the Act forbidding the payment of wages in anything except checks, said:

"The corporation and the laborer are prohibited from making any contract whereby wages are to become due for a longer period than one month as a condition of employment, or by which the laborer is to be paid in any thing except money or negotiable checks. The working man of intelligence is treated as an imbecile. Being over 21 years of age, and not a lunatic or insane, he is deprived of the right to make a contract as to the time when his wages shall become due. Being of sound mind and knowing the value of a horse, he is not allowed to make an agreement with the corporation that he will work 60 days and take the horse in payment. Business might be such that a corporation could not possibly pay wages without getting laborers who were willing to wait for their wages until the corporation could get money with which to pay them by marketing its products. The laborer might be interested in the corporation, or for some reason willing to wait until the corporation could pay him. Yet the parties being able to contract and willing to con-

tract, and desiring for the good of each other to contract, are by this statute forbidden to do so. * * * * * We might enumerate many other infirmities in the Statute, but above are sufficient to destroy it."

Johnson vs. Goodyear Min. Co., (Cal.), Nov. 1899, 59 Pac. Rep., 304.

29. So, very recently, an Illinois statute of 1897, providing that miners should be paid for all coal mined "at such prices as might be agreed on between the respective parties," was held not to prohibit a mine-owner from contracting with his employee to pay only for the lump coal screened, or to prevent in any way any contract for the payment of compensation by a different method or upon a different basis than that specified in the Act, and the Act was hence held constitutional. *Cartwright, J.*, delivering the opinion of the Court, reviewed and reaffirmed the doctrine of *Millett vs. People*, *Fraver vs. People*, *Ramsey vs. People* and *Harding vs. People*, protecting the right of contract between employer and employee from legislative infringement, and said that it was evidently the legislative intention to avoid the objectionable provisions of the former enactment "*by making contracts enforceable according to their terms, instead of attempting to make contracts for the parties*," and concluded thus:

"To hold otherwise would be to render the enactment unconstitutional. *It has been uniformly decided that a laborer cannot be deprived of the right to make his own contracts and exercise his own judgment as to how much he will receive for his labor and what he will receive as payment.*"

Whitebreast Fuel Co. vs. People (Ill)., 51 N. E., 853.

30. The statute of Pennsylvania making it unlawful for mine owners employing miners at bushel or ton rates to screen the output before being weighed and credited to the miner, was held by the Superior Court to be unconstitutional as a violation of the provision of the Pennsylvania constitution that no one should be deprived of his liberty or property except by the law of the land. Rice, J., said:

"Not only is the right of property protected against arbitrary enactments by the Legislature, but also the right of contract necessarily involved in it. *The general rule is that private parties able to contract and willing to contract may freely make such contracts concerning their property or labor not contrary to good morals or public policy as they may deem for their best*

interests: the instances when the Legislature may interfere to abridge or deny this valuable right are exceptional, and such interferences must have some reason for their justification other than the mere judgment of the Legislature that the contract is not for the best interests of one or the other of the parties to it."

Commonwealth vs. Brown, 43 Week. Notes Cases 59, (1898).

To summarize: It will thus be seen that in the foregoing thirty cases in which State statutes, restricting the freedom of contract between employer and employee, and the right of contract between them have been considered by the Courts, the result has been as follows:

Statutes requiring the furnishing of scales upon which to weigh coal have been held unconstitutional by the Supreme Courts of Illinois and Colorado.

A statute forbidding employers to be interested in the furnishing of supplies to employees has been held unconstitutional by the Supreme Court of Illinois.

Statutes requiring coal to be weighed before screening, for the purpose of computing miners' wages, have been held unconstitutional by the Supreme Courts of Illinois and Colorado, and the Superior Courts of Pennsylvania, while other screen statutes have been upheld by the Supreme Courts of Illinois and Kansas on the specific ground that when properly construed they were not intended to regulate the payment of wages and did not prevent the making of contracts in regard thereto.

Statutes and a municipal ordinance limiting the hours of employment to eight hours per day have been held unconstitutional by the Supreme Courts of Illinois, Nebraska, California and Colorado, and the only case in which an eight hour labor law has been upheld being the Utah statute in reference to labor in underground mines, which was held constitutional by the Supreme Court of Utah and the Supreme Court of the United States on the specific ground of the injury to the health of the miners.

A statute regulating the employment of women and children in factories has been upheld by the Supreme Court of Massachusetts as a proper health regulation.

A statute forbidding the employment of women in saloons has been upheld by the United States Circuit Court.

A statute requiring weekly payment of wages has been held

unconstitutional by the Supreme Court of Illinois, and a proposed statute of this character declared by the Supreme Court of Massachusetts to be not in conflict with the broad constitution of that particular state.

A statute regulating compromises of claims between railroad companies and their employers has been held unconstitutional by the Common Pleas Court of Ohio.

A statute requiring the monthly payment of wages has been held unconstitutional by the District Court of Pennsylvania.

A statute requiring all corporations to pay their employees monthly has been declared constitutional by a United States Circuit Court, and later unconstitutional by the Supreme Court of California.

The overwhelming tendency of the decisions, therefore, is to hold as unconstitutional and void the repeated attempts of the Legislature to restrict the right of contract between employer and employee, and such legislation has, in fact, been upheld only in the matter of health.

It will also be seen that the unconstitutionality of such paternal legislation has been emphatically denied by the courts of Illinois, Pennsylvania, West Virginia, Nebraska, Massachusetts, California, Colorado, Kansas, Missouri, and has been affirmed by none except in matters of health, unless with the exception of the ex-parte opinion of the Supreme Court of Massachusetts above referred to, and the decisions of Arkansas, Maryland and Rhode Island upholding the validity of such legislation as applied to corporations only.

A statute forbidding the fining of employes for imperfect work has been held unconstitutional by the Supreme Court of Massachusetts.

A statute forbidding employers from selling goods to their employees at a greater profit than to other customers, has been held unconstitutional by the Supreme Court of West Virginia.

A statute forbidding employers to prohibit employees from joining labor unions has been held unconstitutional by the Supreme Court of Missouri.

A statute requiring employers to immediately pay the wages of discharged employees has been held unconstitutional by the Supreme Court of Arkansas, as to all persons except corporations.

Statutes requiring corporations to pay their employees weekly have been held constitutional by the Supreme Courts of Rhode Island and Maryland solely on the ground that the Legislature had the power to amend charters of corporations.

Manifestly the doctrine of the Arkansas, Rhode Island and Maryland Courts drawing a distinction between corporations and other employers has no application to the case at bar for two reasons:

1st. The Act is made to apply to all persons, both natural and corporate, and cannot be held unconstitutional as to a part of the persons named therein, and valid as to others;

Allgeyer vs. Louisiana, 165 U. S., 578.
Bank vs. Divine Grocery Co., 13 Pickle, 603.

2nd. The complainant having been incorporated February 18, 1863, under a special charter for a term of *ninety-nine years*, and the Legislature having reserved no right to repeal or amend its charter, the doctrine of the Arkansas, Rhode Island and Maryland cases could in no event be applied as against it.

Record, p. 30

It will be noted that in some of the foregoing cases the legislation in question applied only to certain classes of labor, and in one or two cases the unconstitutionality of the statutes was rested upon this ground; but it will also be seen that in the great majority of the cases, the opinion of the Court was based upon the broad principle contended for in the case at bar that the legislation in question was an arbitrary and unjustifiable interference on the part of the Legislature with the right of contract between an employer and employee, the opinion in the majority of the cases being rested squarely upon this proposition, either as one of the grounds of decision or as the only ground.

In accordance with the foregoing consensus of authority is the opinion expressed in Tiedeman's Police Power in the chapter entitled "Police Regulation of the Relation of Master and Servant."

"Between adults, employer or employed, since all men are free and equal, and are entitled to the equal protection of the law, neither party can be compelled to enter into business relations with the other, except upon his own terms, voluntarily and free from any coercion whatsoever. The State has no right to interfere in a private employment and stipulate the terms upon

which the services are to be rendered * * * .

* * * As soon as the law places one for any just reason under a disability, or gives to another a privilege not enjoyed in common by all, protection from oppression becomes a duty of the State, so far as the disability or its cause, or the grant of the privilege, produces or renders the oppression possible. The law can only guarantee to men on a legal plane of equality, protection against trespasses upon their rights. To place the working classes under special protection against the aggression of capital, beyond the careful and strict enforcement of their rights; to compel the employer to pay the rate of wages, determined by the State to be equitable, is to change the government from a government of freemen to a paternal government, or a despotism, which is the same thing.

"But even if this reasoning should not be sufficient to prove the unconstitutionality of State interference in the relation of master and servant, the very futility of such interference would at least cast a doubt upon its constitutionality. *Law can never create social forces. On the contrary, law is the resultant of the social forces.* If the social forces at work at any given time produce an inequality in the material conditions of classes of society and give rise to the oppression of one class by another; if the inferior class is not naturally strong enough to resist the oppression, when free from legal restraints, no law can afford it protection. For how can the workingman secure the enforcement of a law made for his protection, when the protection of the State is required, because his needs and the necessities of his family compel him to submit to the unrighteous exactions of the capitalist. Will not the same needs and necessities force him to place by his vote men in the various State offices whose antipathy to his interests will make the law a dead letter, if not secure its repeal?

"In England, where suffrage is limited, such a law is somewhat reasonable, because those for whose benefit it was enacted are under legal disability. But in this country where suffrage is universal, and the wage earners constitute a vast majority of the voters, if they are unable to assert their claims without the aid of law, they cannot do so with its aid. And thus their inefficacy confirms the unconstitutionality of laws, which are designed to protect the workingman against the oppression of the employer. *Laws, therefore, which are designed to regulate the terms of hiring in strictly private employments, are unconstitutional, because they operate as an interference with one's natural liberty, in a case in which there is no trespass upon private right, and no threatening injury to the public. And this conclusion not only applies to laws regulating the rate of wages of private workmen, but also any other law, whose object is to regulate any of the terms of hiring, such as the number of hours of labor per day, which the employer may demand. There can be no*

constitutional interference by the State in the private relation of master and servant except for the purpose of preventing frauds and trespasses."

Tiedman's Limitations of Police Powers, Sec. 178.

Third. The attempts of the Legislature in other analagous cases to deprive individuals of liberty and property under the guise of the police power, have likewise been uniformly held unconstitutional by the Courts.

The following cases among others establish this proposition:

1. An Act of the New York Legislature declaring it a misdemeanor to manufacture cigars or tobacco on any floor of a tenement house, if such floor was occupied as a home or residence, was held by the Supreme Court of New York to deprive individuals of the liberty guaranteed them by the constitution, and to be unconstitutional.

In re Jacobs, 98 N. Y., 98; S. C. 50 Am. Dec., 636.

2. An Act of the New York Legislature prohibiting the manufacture or sale for food of any substitute for butter or cheese was held by the Supreme Court of New York to be likewise unconstitutional for the same reason.

People vs. Marx, 98 N. Y., 377; S. C. 52 Am. Rep., 34.

3. A New York statute prohibiting any person selling any article of food from giving any other article as a prize or premium to the purchaser, was held by the Supreme Court of New York to be unconstitutional and void as an infringement upon the liberty of the seller. Peckham, J., in delivering the opinion of the Court, refers to the foregoing case of *in re* Jacobs as "authority for the statement that the Legislature cannot, without reason, and arbitrarily, infringe upon the liberty or the property rights of any person within the protection of the constitution of this State; and that if the Legislature shall determine what is a proper exercise of its police power, its decision is subject to the scrutiny of the Courts. * * * * As is also said in the last case, it is generally for the Legislature to determine what laws and regulations are needed to protect the public health and serve the public comfort and safety, and if its measures are calculated, intended, convenient, or appropriate to accomplish such ends, an exercise of its discretion is not the subject of judicial review. But those measures must have some relation to these ends. Courts

must be able to see, upon a perusal of the enactment, that there is some fair, just, and reasonable connection between it and the ends above mentioned. Unless such relation exists the enactment cannot be upheld as an exercise of the police power."

People vs. Gillson, 109 New York, 389.

4. Likewise the Supreme Court of Tennessee has held unconstitutional the Act of 1895, by which all transfer of property to prefer creditors, or that would have that effect, whether made by a solvent or an insolvent debtor were forbidden, Chief Justice Snodgrass, in delivering the opinion of the Court, saying:

"These general provisions in respect to the right to own property, equally protect the right to use, enjoy, exchange and transmit it as held in the Morris case before referred to, and neither can be taken from the citizen by the arbitrary enactment of the Legislature. That the citizen can be restrained from any improper use or improper disposition of his property is not doubted, and is, of course, not asserted here, but such is not the effect of this Act, or if the purpose of the Legislature was to accomplish this result, they have attempted it by means of legislation beyond their power to adopt."

Bank vs. Divine Grocery Co., 13 Pickle (Tenn.), 603, at 612.

5. An ordinance of the city of San Francisco, which made it unlawful for any one to carry on a laundry without the consent of a Board of Supervisors except in a building constructed of brick or stone, and left it to the arbitrary will of the Board to determine to whom such consent should be given, was held unconstitutional by the Supreme Court of the United States.

Yick Wo vs. Hopkins, 118 U. S., 356.

6. An Act of the Legislature of Louisiana, providing that "any firm, person or corporation who shall fill up, sign or issue, in this State, any certificate of insurance under an open marine policy, or in any manner whatever does any act in this State to effect for himself or for another, insurance on property then in this State, in any marine insurance company, which has not complied in all respects with the laws of this State, shall be subject to a fine of one thousand dollars," was held by the Supreme Court of the United States to be invalid as a violation of the Fourteenth Amendment.

Allgeyer vs. Louisiana, 165 U. S., 578.

7. Recently a New York statute prohibiting the sale of rail-

way tickets by any person not an agent of the carrier and designed to prevent the sale of tickets by brokers, was held unconstitutional by the New York Court of Appeals as an unlawful restraint upon individual liberty, not maintainable as an exercise of the police power of the State. Parker, C. J., delivering the opinion of the Court said of the police power of the State that:

"However broad and extensive, (it) is not above the constitution, in obedience to the commands of which the Courts will protect the rights of individuals from invasion under the guise of police regulations, when it is manifest that such is not the object and purpose of the regulation; and, while it is the general province of the Legislature to determine what laws and regulations are needed to protect the public health, comfort, and safety, Courts must be able to say, upon a perusal of the enactment, that there is some fair and reasonable connection between it and the ends above mentioned. Unless such relation exists, an enactment cannot be upheld as an exercise of the police power."

People vs. Warden, (N. Y.), 51 N. E., 1006 (1898).

These cases serve as a further illustration of the proposition that each and every arbitrary interference by the Legislature with the liberty or property of the invidual is subject to review by the Courts and is unconstitutional and void.

It is believed that in no case have the Courts sustained the validity of Acts of this character except upon some ground which did not involve the power of the Legislature to interfere with the rights of individuals to voluntarily enter into contracts as guaranteed by the Fourteenth Amendment.

Applying to the case at bar the principles deduced from all the authorities heretofore cited, it is evident that the Act of 1899 as construed by the Supreme Court of Tennessee, is not a legitimate exercise of the police powers of the State, and is in conflict with the Fourteenth Amendment.

Conceding every proper presumption in favor of the validity of legislation, giving to the statute on trial the benefit of every reasonable doubt, yet it cannot be made to appear that this legislation has any substantial relation to the public welfare, or that there is any reasonable ground for believing it to be necessary for the good of the community.

It is clear that under the authorities above cited, to justify such legislation as a legitimate exercise of the police power it

must be the public welfare that is at stake, and not merely the financial welfare of a particular class, as for example laborers or employers. But it may be safely asserted that not only has this legislation no substantial relation to the welfare of the community at large, but that there is not a scintilla of evidence or matter within judicial notice from which it may be reasonably inferred, that in any substantial sense it is necessary to the welfare of the laborers themselves, or will conduce in any respect to their well-being. On the contrary, if enforced, its only result will be to deprive laborers generally of the convenience which they now enjoy of anticipating the monthly payment of their wages, and to work especial hardship upon the families of the improvident.

The Act in question is a useless interference on the part of the Legislature with the right of contract between persons who are *sui juris*, and not justified by any substantial relation to the welfare of society. It does not contain a single element which has been considered by the Courts as a justification of legislative interference with the right of contract, and is a mere arbitrary enactment in the guise of protecting the public interest.

It is earnestly insisted that the Act of 1899 is not valid as an exercise of the police-power of the State, that it is in conflict with the Fourteenth Amendment of the Constitution of the United States, and that for the foregoing reasons the Supreme Court of Tennessee erred in rendering a decree against the Plaintiff in error for the money value of the orders and the costs of the cause, and that Defendant's bill should be dismissed at his cost.

C. E. LUCKY,
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LUCKY, SANFORD & FOWLER,
of Counsel.

Office Supreme Court, U.S.
FILED
MAR 13 1901
JAMES H. McKENNEY,
Clerk

No. 174. 22.
Sup. Ct. Bk. of Lucky v. Harbison
Sanford for P. C.

Filed Mar. 13, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 174.

THE KNOXVILLE IRON COMPANY, PLAINTIFF IN ERROR,

vs.

SAMUEL HARBISON, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

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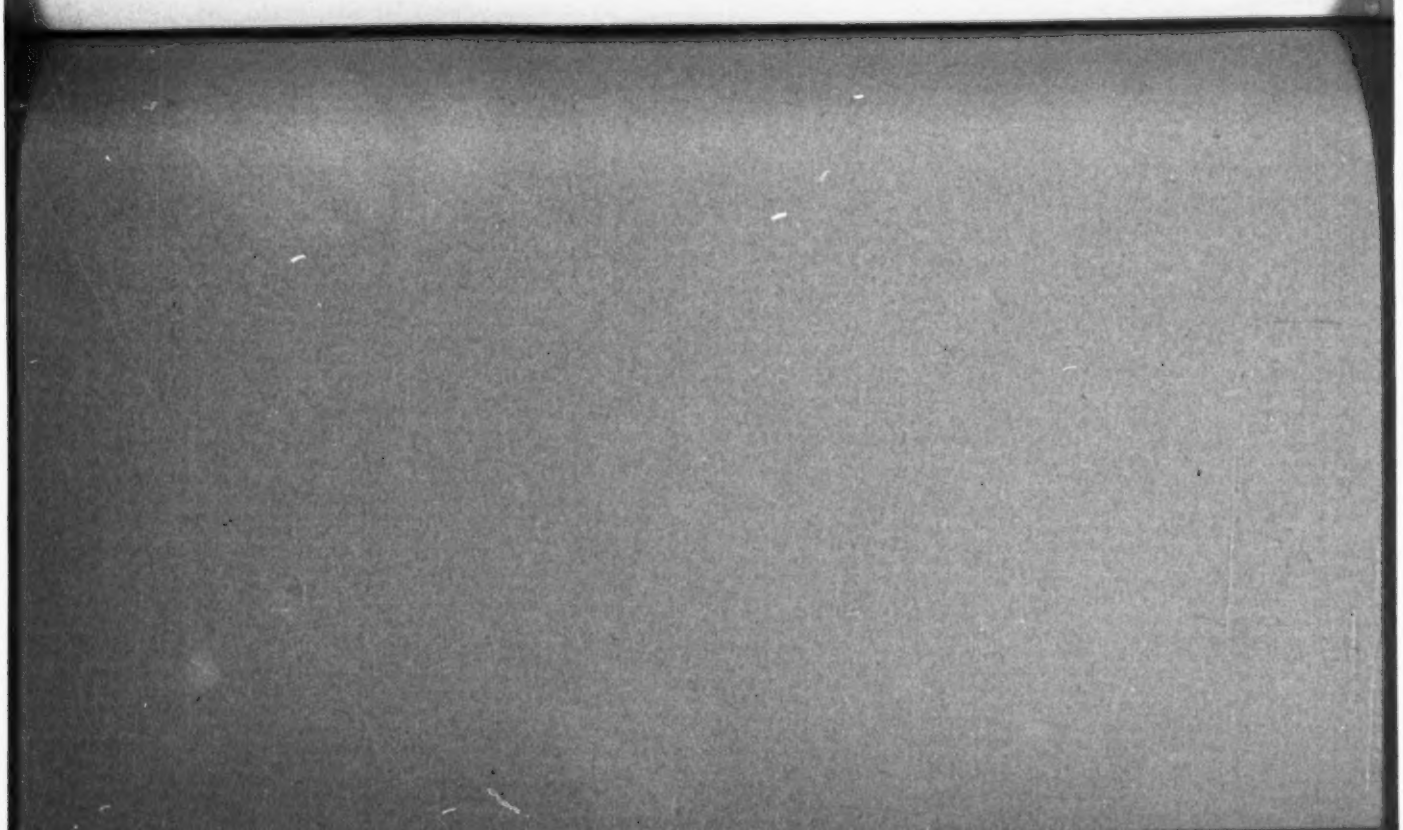
JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 3-13-'01



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Supplemental Brief for Plaintiff in Error.

It is respectfully submitted that the arguments contained in the reply brief for the defendant in error are not well taken for the following reasons:

1.

A State statute is not necessarily in accord with the fourteenth amendment, as suggested in the reply brief, merely because it provides for a regular course of procedure through courts of justice, giving the parties sufficient notice and adequate opportunity to defend.

If the statute itself transcends the legitimate authority of the State and attempts to interfere with the property or liberties of individuals beyond the proper police power of the State, the statute is, for this reason, not due process of law and is repugnant to the fourteenth amendment.

Thus, in *Allgeyer vs. Louisiana*, in which a Louisiana statute imposing a fine on any person obtaining insurance in a marine insurance company that had not complied with the laws of the State was held to be repugnant to the fourteenth amendment, Mr. Justice Peckham, delivering the opinion of the court, said:

"We think the statute is in violation of the fourteenth amendment of the Federal Constitution in that it deprives the defendants of their liberty without due process of law. *The statute which forbids such act does not become due process of law because it is inconsistent with the provisions of the Constitution of the United States.*"

Allgeyer *vs.* Louisiana, 165 U. S., 578.

So, in the case of *Holden vs. Hardy*, Mr. Justice Brown, delivering the opinion of the court, recognizes that State legislation may constitute a deprivation of liberty or property without due process of law upon three grounds: First, that it unjustly discriminates as respects a particular individual or class of individuals as distinct from the rest of the community; second, that it constitutes such a change in the general system of the jurisprudence of the State as to abolish certain immutable principles of justice inherent in the very idea of free government, such as that no man shall be condemned in person or property without due notice and opportunity to defend; and, third where the State legislature transcends its proper police power in assuming to legislate for the health or morals of the community (in other words, where from the want of authority in the legislature the act itself, under the doctrine in the Allgeyer case, does not constitute due process of law). In this opinion Mr. Justice Brown said:

"Recognizing the difficulty in defining, with exactness, the phrase 'due process of law,' it is certain that these words imply a conformity with natural and inherent principles of justice, and forbid that one man's property or right to property, shall be taken for the benefit of another, or for the benefit of the State, without compensation, and that no one shall be condemned in person or property without an opportunity of being heard in his own defense."

"As the possession of property, of which a person cannot be deprived, doubtless implies that such property may be acquired, it is safe to say that a State law, which undertakes to deprive any class of persons of the general power to acquire property, would also be obnoxious to the same provision. Indeed we may go a step further, and say that as property can only be legally acquired as between living persons by contract, that a general prohibition against entering into contracts with respect to property or having as their object the acquisition of property, would be equally invalid."

Holden *vs.* Hardy, 169 U. S., 367.

2.

The cases of *Orient Insurance Co. vs. Daggs*, 172 U. S., 557, and *Dugger vs. Insurance Co.*, 95 Tenn., 250, are clearly distinguishable for the reason that the peculiar and universal nature of the contract of insurance affects it with a public interest which makes it, under an established public policy, peculiarly the subject of legislative regulation, especially legislation of the character in question, designed to prevent fraud on the part of insurance companies in collecting premiums on one valuation and paying on a lower.

In *Orient Insurance Company vs. Daggs* it was held, in a suit between a citizen of the State of Missouri and a foreign corporation, that a Missouri statute compelling fire insurance companies in cases of total loss to pay the amount for which the property was insured, less subsequent depreciation, did not deprive the insurers of property without due process of law, as it left the parties to fix the valuation of the property as they chose, but only ascribed estoppel to their acts

after this was done and made their action in the matter of valuation conclusive. The opinion of Mr. Justice McKenna was further based partly on the proposition that the State had a right to attach this condition to the doing of business by corporations of its own creation, and had an equal right to impose such condition upon foreign corporations admitted into the State to do business, the statute having been held by the supreme court of Missouri to be made such a condition upon such foreign corporations.

In *Dugger vs. Insurance Company*, in which a Tennessee statute making void the stipulations in insurance policies limiting liability to less than the full amount of loss was held constitutional, the opinion of the court, so far as it relates to the conflict of the act with the fourteenth amendment, rested entirely upon the doctrine that the act was valid as applied to the complainant, a foreign corporation, as an act prescribing the terms on which foreign corporations should come within its borders and carry on business with its citizens, and so far as it related to the declaration of rights of the constitution of Tennessee the validity of the act, as a legitimate exercise of the police power of the State, is based almost entirely upon the established public policy of regulating the stipulations of insurance policies and the long line of cases upholding such regulations. Among other cases cited by Judge Beard in the opinion is the Pennsylvania case of Commonwealth *vs.* Vrooman, 25 L. R. A., 250, in which an act confining the issuance of fire-insurance policies exclusively to corporations was held to be constitutional upon the specific ground, among others, that "the business of insurance against loss by fire is by reason of its magnitude, its importance to property-owners, and the nature of the business, a proper subject for the exercise of the police power of the State," this case being referred to by Judge Beard "to show how far the State's power to interfere in insurance contracts has been pressed by the court of highest respectability."

It is to be noted in this connection that while the courts of Pennsylvania have held this regulation of insurance policies to be a legitimate exercise of the police power of the State on account of the public nature of the business, they have likewise uniformly held legislation interfering with the right of contract between employer and employé, either by requiring the payment of wages in money or otherwise, to be an unauthorized exercise of legislative power and void. These several Pennsylvania decisions show conclusively that the regulation of insurance policies is in an entirely different category from the regulation of contracts between employers and employés, and that a decision in reference to the one has practically no bearing upon a question relating to the regulation of the other.

It is respectfully insisted that the insurance cases are distinguishable from the case at bar on the ground of the peculiar nature of the insurance contracts, and that they are more nearly analogous to the Grainger cases and other cases, in which it has been held that the State, in the exercise of its police power, may not only regulate the charges of common carriers, but may regulate the charge for storing of grain in bulk in warehouses as a business "affected with a public interest."

Munn *vs.* Illinois, 94 U. S., 113.
People *vs.* Budd, 117 N. Y., 1.

The underlying principle upholding the regulation of insurance contracts is the magnitude of the business and its importance to the community at large, affecting, as it does, practically all classes of people and well nigh every citizen in the community, and making it a legitimate subject for the exercise of the police power. This proposition is not disputed, but it manifestly has no application to legislation such as that now under consideration, abridging for no valid reason the right of contract between certain classes of the community only.

3.

The case of *Holden vs. Hardy*, 169 *U. S.*, 366, is, as already shown, clearly distinguishable from the case at bar. The specific ground upon which the decision in that case is based, as appears from the opinion of Mr. Justice Brown, is that the police power "may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances;" that the legislature may unquestionably establish reasonable police regulations for the protection of the lives of its citizens; that similar regulations may also be adopted for the protection of their health and morals, it being "as much for the interest of the State that the public health should be protected as that life should be made secure;" and that the act in question, being specifically limited to employment in underground mines, smelters, and refineries, might be sustained as a valid exercise of the police power of the State, there being reasonable grounds for believing in the correctness of the legislative judgment that these employments when too long pursued are detrimental to the health of the employés.

The court reaffirmed in its opinion the general principle that the right to make proper contracts is protected by the fourteenth amendment, and specifically stated that it had "no disposition to criticise the many authorities which hold that State statutes protecting the hours of labor are unconstitutional."

This case does not lay down the broad proposition insisted upon in the reply brief that the mere fact that the parties do not stand upon an equality gives the legislature *ipso facto* authority to regulate their mutual dealings so as to put them on an equality, but only held the argument that the legislature could not interfere in the contracts of persons *sui juris* in matters affecting their health to be unsound, for the reason that in their deal-

ings in this matter the employés did not stand upon an equality with the employer, Mr. Justice Brown in this connection using the words cited in the reply brief, "But the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere when the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself."

In other words, the case is not based upon the doctrine that the mere fact that the parties do not stand on an equality will of itself justify the interference, but incidentally asserts the negative doctrine that when the health, morals, or other consideration of public welfare demands the interference in the relationship of employer and employé, the mere fact that the parties are *sui juris* will not render such interference unlawful, since the parties do not stand on an equality.

4.

The case of *St. Louis, I. M. & S. R'y Co. vs. Paul*, 173 *U. S.*, 404, is not based upon the broad right of the legislature to regulate the right of contract. In this case an Arkansas statute, providing for the immediate payment of the unpaid wages due a discharged employé of any corporation or person engaged in operating or constructing a railroad, having been upheld by the supreme court of Arkansas as to corporations only, and as an amendment of corporate charters under the reserved power of the legislature, affirming the former case of Leep *vs.* St. Louis Railway Company, cited in the original brief, the opinion of the supreme court of Arkansas was affirmed by the Supreme Court of the United States upon the same ground.

The Arkansas constitution expressly provided that corporations might be formed under general laws which might be altered and repealed from time to time, and gave the legislature power to alter, revoke, or annul any charter when-

ever in their opinion it might be injurious to the citizens of the State, but in such manner as to do no injustice to the corporations. It was upon this specific ground, in connection with the public nature of the business involved, that the validity of the statute was upheld as to corporations. Mr. Chief Justice Fuller, delivering the opinion of the court, said:

"The contention is that as to railroad corporations organized prior to its passage, the act was void because in violation of the fourteenth amendment. Corporations are the creation of the State, endowed with such faculties as the State bestows and subject to such conditions as the State imposes, and if the power to modify their charters is reserved, that reservation is a part of the contract, and no change within the legitimate exercise of the power can be said to impair its obligation; and as *this amendment rested on reasons deduced from the peculiar character of the business* of the *corporations affected and the public nature of their functions*, and applied to all alike, the equal protection of the law was not denied."

* * * * * * *

"*In view of the fact that these corporations were clothed with a public trust, and discharged duties of public consequence, affecting the community at large*, the supreme court [of Arkansas] held the regulation, as promoting the public interest in the protection of employés to the limited extent stated, to be properly within the power to amend reserved under the State constitution. Inasmuch as the right to contract is not absolute, but may be subjected to the restraints demanded by the safety and welfare of the State, we do not think that conclusion in its application to the power to amend can be disputed on the ground of infraction of the fourteenth amendment."

The doctrine of this case clearly has no application to the case at bar, for the reason that, as shown in the original brief, The Knoxville Iron Company, plaintiff in error, was incorporated in 1868, under a special legislative charter, for the term of ninety-nine years, with no power of amendment

reserved to the legislature either in the charter or by general law.

Charter, Trans., p. 30.

5.

While the statutes of Tennessee make the findings of fact of the court of appeals conclusive and final (Acts of Tennessee, 1895, chapter 6), yet their conclusions of fact, in so far as they are sought to be relied on for the purpose of depriving the plaintiff in error of the opinion of this honorable court as to the constitutionality of the statute in question, are manifestly ineffective, it being well-settled law that the conclusions of the State court as to the constitutionality of a statute are not binding upon this honorable court. It is respectfully submitted that this doctrine extends not only to the fact of constitutionality or unconstitutionality as found by the State court, but to the facts upon which said opinion is based.

If it were otherwise, manifestly the right of bringing cases for review from the State court to the Supreme Court of the United States would often be practically cut off, since, if the State court found as a fact that the act was necessary for the protection of public health, public morals, and public welfare, and that it was reasonably adapted to these purposes, and if these findings of fact were binding, this would completely cut off all investigation or inquiry by this court, and would leave it powerless to set aside even an unconstitutional statute.

It is respectfully submitted that the findings of the court of appeals in this case as to what is termed a species of compulsion on the part of the plaintiff in error, arising out of the necessities or improvidence of its employés, and termed by said court a motive power practically depriving the employés of their freedom of choice as to the acceptance of coal orders, are not binding upon this court, which will look at the

facts in evidence, from which it appears that no such compulsion in fact exists, and that there is complete liberty on the part of the employés as to the acceptance of coal orders, the court of chancery appeals having itself found as a fact that *the defendant has never insisted upon its laborers giving any orders, and that the orders are a convenience to the employés* (pp. 66, 67).

The only witness on this point is the company's treasurer, Otis A. Brown, who testifies as follows :

"Q. State whether or not any employé of your company is ever requested to draw these orders.

"A. They are not.

"Q. State whether or not the drawing of these orders and presenting them to the company for acceptance is a voluntary act on their part.

"A. It is."

Trans., p. 21.

In any event, however, the question of compulsion or non-compulsion in this present case is, it is respectfully submitted, entirely immaterial, for the reason that the statute is broad in its terms, and its constitutionality does not depend upon the habit of dealings of this or any other particular company. Its validity or invalidity clearly cannot be determined by the question as to whether or not advantage is taken of employés by any particular employer, but its constitutionality must be determined upon the general question as to whether or not such legislation is lawful and whether or not there are reasons of public welfare requiring such general legislative interference with right of private contract between employer and employé.

6.

It is respectfully insisted that all the cases cited in the reply brief of the defendant in error fall within one or the other of those classes in which, as conceded in our original

brief, the exercise of the police power is well settled, and that none of the cases cited conflict with the propositions relied upon in the original brief, upon which it is submitted that the Tennessee statute of 1899 is unconstitutional.

The position of plaintiff in error in its original brief is misunderstood in the reply brief of defendant in error. It was not intended to be asserted in the original brief that health, morals, and safety are alone concerned in the exercise of the police power of the State, but it was expressly conceded that, under the doctrine of *Lawton vs. Steele* and numerous other decisions, the police power may extend to other matters affecting the general welfare of the community at large. However, it was insisted that, in respect to matters affecting the public welfare outside of the primary police duties, safety, health, and morals, interference by the State with the right of contract is, under the doctrine of *Lawton vs. Steele*, only justified when demanded by the public welfare and the well being of the community at large, as distinguished from the financial well being of a particular class, however large and meritorious that class may be.

None of the cases cited in the reply brief conflict with this proposition.

Thus the case of *Dent vs. West Virginia*, 1129 U. S., 114, upholding the right of the State to require certificates from the board of health as a prerequisite to the practice of medicine, comes clearly within the power of preserving the public health.

The case of *Douglass vs. Kentucky*, 168 U. S., 488, in reference to regulation of lotteries, comes with equal clearness within the power of preserving the public morals.

The laws regulating the contracts of married women, infants, and other persons not *sui juris* at common law, manifestly have no application to the case at bar, as the parties in such cases are not deprived by the legislature of any contract rights they formerly possessed, but their contract rights are, on the contrary, enlarged.

The laws making corporate stockholders liable for employés' wages are sustainable as proper conditions attached to the granting of corporate franchises.

The mechanics' lien laws likewise are not a regulation of the right of contract, as no such statute attempts to provide that such lien shall exist, whether the parties wish it or no, or to render invalid a contract made by the laborer waiving the benefit of such lien.

The essential feature of the case at bar is that the legislature attempts to read into the contract of employment certain features which even the parties cannot waive. This is not sought to be done either in the mechanics' lien laws or any other statutes cited in the reply brief, which merely prescribe the rights of the parties in the absence of agreement of the parties to the contrary.

In *Barbier vs. Connelly*, 113 U. S., 27, an ordinance of the city of San Francisco prohibiting the carrying on of public laundries from 10 o'clock at night until 6 o'clock in the morning, was held valid as a purely police regulation that might be justified as a necessary measure of protection in a city composed largely of wooden buildings, like San Francisco, and of whose necessity the municipal body was the judge. This was clearly a police regulation in a matter affecting the public safety, and illustrates the proposition contended for on page 14 of our original brief as to the large measure of discretion vested in the legislature in matters affecting the primary police duties, as distinct from more general and indefinite considerations of public welfare.

The doctrine of this case was furthermore strictly limited by the case of *Yick Wo vs. Hopkins*, 118 U. S., 356, in which an ordinance of the city of San Francisco, making it unlawful for any one to carry on a laundry without the consent of the board of supervisors, except in a building constructed of brick or stone, and leaving such consent to the arbitrary will of the board, was held unconstitutional.

In *Lawton vs. Steele*, 152 U. S., 133, a New York statute, prohibiting fishing with nets and declaring the same to be a nuisance and subject to summary abatement, was upheld as constitutional upon the ground of the immemorial right of the State, under its police power, to enact proper laws for the preservation of game and fish, in the general interest of the public, Mr. Justice Brown, in the opinion in this case, attaching the qualification above shown to the exercise of the police power for other than primary purposes, that when sought to be exercised for the general welfare it must be for the benefit of the community at large, as distinguished from that of a particular class.

In the case of Louisville & Nashville Railroad Co. *vs.* Kentucky, 161 U. S., 171, it was held that the State might lawfully prohibit the purchase or lease of parallel or competing lines of railroad or the consolidation of their stock, franchises, and property, such purchase, lease, or consolidation being contrary to public policy and inimical to the public interest, this case being based on the doctrine of *Munn vs. Illinois* as to the regulation of property "affected with a public interest." Mr. Justice Brown, delivering the opinion of the court, said:

"While the police power has been most frequently exercised with respect to matters which concern the public health, safety or morals, we have frequently held that corporations engaged in a public service are subject to legislative control, so far as it becomes necessary for the protection of the public interest. In the case of *Munn vs. Illinois*, 94 U. S., 113, Mr. Chief Justice Waite said: 'Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use, he must submit to the control.'"

In the case of *Davis vs. Massachusetts*, 167 U. S., 43, it was held that an ordinance of the city of Boston, passed in pursuance of legislative authority, prohibiting any person from making a public address on the Boston Commons without a permit from the mayor, was within the police power and not in violation of the fourteenth amendment, the case being rested in the opinion on the fact that the Common was public property, and that the city, under its delegated power from the legislature, had the right to make reasonable and proper regulations for its use by the public.

In the case of *Rideout vs. Knox*, 148 Mass., 368, the power of the legislature to declare a fence unnecessarily high and maliciously erected for the purpose of annoying adjacent proprietors a private nuisance was upheld as within the limits of the police power, on the ground that "it simply restrains the obnoxious use of the owner's premises; and, although the use is not directly injurious to the public at large, there is a public interest to restrain this kind of annoyance of one neighbor by another and to make a definite limit beyond which it is not lawful to go." Such restraint is manifestly in furtherance of the public peace, and such legislation is sustainable on that ground.

So the United States statutes regulating the rights of seamen are not applicable to the case at bar, seamen having from the beginning been regarded as peculiarly the wards of legislation and having their rights protected by maritime, commercial, and statute law, treating them as a class apart.

"Seamen are a class of men peculiarly in need of protection. The courts of maritime law not only extend to them a guardianship, but the codes of all commercial nations contain many provisions in their behalf. In *England* and the *United States* the subject is regulated almost entirely by statute."

21 Am. & Eng. Enc. Law (1st ed.), p. 915.

7.

While the statutes regulating the contract rate of interest for the use of money seem at first sight to be in conflict with our present contention, yet it is respectfully submitted that they furnish no real exception to the rule contended for, but are to be supported as a traditional policy of the race, rooted in abhorrence of usury from the earliest times, usury being prohibited by Mosaic law, condemned by the church under severest penalties, historically regarded as *malum in se*, and a crime at common law, and hence logically subject to legislative prohibition or restriction, the right of contract protected by the Constitution clearly not protecting contracts illegal at common law. It was furthermore regulated by statute of 37 Henry VIII, that became part of the common law of the United States:

"The Romans, through the greater part of their history, had the deepest abhorrence of usury. * * * But it is not only the civilized and commercial nations of modern Europe and the sage law-givers of ancient Rome that have regulated the interest of money. It will be deemed a little singular that the same voice against usury should have been raised in the laws of China, in the Hindoo institutes of Menu, in the Koran of Mahomet, and, perhaps we may say, in the laws of all nations that we know of, whether Greek or barbarian."

Kent, Ch., in Dunham *vs.* Gould, 16 John. (N. Y.), 367.

"Usury was an offense at common law, and the usurer was not only punished by the censures of the church in his lifetime, but was denied a Christian burial; and by the laws of Alfred the Great and Edward the Confessor, if, after death even, a man was found to have been a usurer, his goods were forfeited to the Crown and his lands to the lord of the fee. The statute 37 Henry VIII, ch. 9, entitled 'A bill against usury,' revised the former acts and laws, and is the foundation of all the statutes prohibiting usury from that day to this."

Hubbard, J., in Gray *vs.* Bennett, 3 Met. (Mass.), 522.

"Usury laws, however objectionable in principle, are admitted in the judicial discussions of the subject to rest upon such a traditional policy of the race, antedating the constitutions, as to make any question useless in the present state of public opinion."

Frederick N Judson: Address on "Liberty of Contract under the Police Power." Proceedings of Amer. Bar Assoc'n for 1891, p. 231.

8.

Since the preparation of the original brief in this case another decision has been added to the long list holding laws regulating the right of contract between employer and employé to be unconstitutional, of which, however, we have only the account contained in the telegraphic dispatches.

By a special dispatch to the New York *Commercial*, dated Albany, February 26, 1901, it is stated that the New York court of appeals has affirmed the judgment in the case of William J. Rogers against Controller Coler of New York, in which "Rogers sued to recover a balance due on a contract performed which the controller refused to pay on the ground that the contractor had not complied with the eight-hour law." One of the grounds on which the law is declared to be unconstitutional is thus stated in the dispatch:

"Because it invades rights of liberty and property, in that it denies to the city and the contractor the right to agree with their employés upon the measure of their compensation."

9.

In connection with the cases cited in our original brief, the attention of the court is respectfully called to the fact that the opinion of Circuit Judge Skinner, in the case of *Skinner vs. Garnett Gold Mining Co.*, 96 Fed. Rep., 735, that the California statute requiring corporations to pay their employés once a month in cash is constitutional, is based

largely on the fact that the California constitution provides that all laws concerning corporations "may be altered from time to time or repealed," and that the statute is hence a valid exercise of this reserved power of amendment. Judge Skinner in his opinion said:

"Under this provision the act of 1897 must be held as a legitimate exercise of the plenary powers of the legislature to modify, by general laws, within reasonable limits, the rights and privileges which corporations of the State possess as such, and this legislature may be justified upon the ground that the purposes of the State in creating corporations will be the better accomplished by such amendment" (p. 744).

The attention of the court is also called to the dissenting opinions of Judges English and Brandon in the case of *Peel Splint Co. vs. State*, 36 W. Va., 802, in which the constitutionality of the West Virginia scrip act was sustained by an evenly divided court. Judge Brandon, dissenting, said:

"The word 'liberty' does not mean simply exemption from bodily imprisonment, but liberty and freedom to engage in lawful business, and to make lawful contracts therein to the ends of earning a livelihood for self and family, and of acquiring and enjoying property, and of obtaining happiness. The right to contract and be contracted with is indispensable to these indispensable objects. * * * It is a privilege essential to earn bread and secure happiness. Scarcely any of the great cardinal rights are more universally recognized and vindicated under our system, indeed under all civilized governments, than this right of contract. A man must have the right to exercise his skill and talents, and dispose of and use his labor and property, in lawful pursuits, as to him shall seem proper. * * *

"If, upon the suggestion of a supposed or real evil, always incident to the transaction of all business, the legislature can restrict lawful contracts in private business, government becomes not simply paternal but oppressive and tyrannical. The 'scrip act' would prevent the farmer, brick-maker or coal operator from giving to his hands for wages an order to any one for sugar, flour or meat—a great reversal in the right of contracts as used time out of mind."

10.

It is respectfully submitted, in conclusion, that no public necessity is shown to exist for the passage of the measure under consideration in this case, and none is shown in the testimony.

No employé is here complaining of hardship or oppression. None was introduced as a witness on the hearing of the cause. The proof furnishes not a scintilla of proof as to any public necessity for the passage of this act, any abuses requiring correction, or any employé dissatisfied with the order system.

Furthermore, no substantial reason for the passage of the act, no abuse requiring correction, is pointed out in the briefs for defendant in error.

It is true that in the brief for defendant in error, in the case of *Dayton Coal & Iron Co., Ltd., vs. Barton*, it is suggested that the act will have a "tendency to promote peace and to prevent bloodshed and strikes," but this assertion is wholly unsupported by the record, there being not a scintilla of proof, or even suggestion in the proof, that there has ever been any bloodshed or strikes on account of the order system, or that its abolition will in any degree affect these matters.

In the reply brief in this present case the entire argument or reason upon which the alleged necessity for this legislation is predicated is contained in the following sentence:

"It is necessary to the welfare of the employé, because it enables him to obtain the full amount of his wages without being compelled to take payment thereof in coal, which he cannot consume, or in coal orders, which he cannot convert into money except at a costly discount" (Reply Brief, p. 14).

This argument, based on supposed compulsion of the laborers, flies in the very teeth of the facts proven in this case.

As already cited, there is no compulsion or restraint whatever on the employés in this matter.

The uncontradicted testimony of the company's treasurer is that the company has a regular monthly pay-day, upon which each employé receives in cash his wages for the previous month, having, however, if he so desires, a weekly privilege of anticipating all wages for work to date in coal orders (Trans., p. 21); that these orders are issued at the market price of coal the same as charged to other customers (Trans., p. 22); that no employé is requested to draw these orders, the same being a voluntary act on their part (Trans., p. 21); that *about 25 per cent. of the employés never draw orders at all*, the remaining 75 per cent. of the employés drawing a varying amount of their wages in this way (Trans., p. 27); that on the average only about 50 per cent. of the total wages is paid through orders (Trans., p. 22) (inadvertently stated by the court of chancery appeals as 75 per cent.), *and that the highest-paid workmen, earning from* $45 *to* $175 *a month, draw more orders in proportion to the amount they make than any other laborers of the company* (Trans., p. 26).

The court of chancery appeals further found as a fact that the "orders are a convenience to the defendant's employés in the way of enabling them to realize on their wages before the regular pay-day and up to that pay-day" (Trans., p. 67).

It is respectfully submitted that on these facts no overruling necessity exists requiring legislative interference depriving employers and employed of the unimpaired right of free contract and virtually abrogating their right of contract by preventing them from contracting as they please and enforcing the contract, denying them the right, whether they will or no, to contract to give and accept in payment of wages an order payable in merchandise alone and not redeemable in money.

It is stated in the answer of the company that while by the acceptance of the orders by the employés "it is relieved from all liability to redeem the same in cash, yet it has never re-

fused, and is willing and ready to redeem the same in cash, provided the employé fails to negotiate the same and in good faith presents the same for redemption in person on a regular pay-day."

Answer, Trans., p. 18.

The treasurer of the company testifies as follows:

"Q. In case that your employés presented these orders on a regular pay-day, would you or would your company redeem them in cash?

"A. We would, if presented by the man who signed the order."

Trans., p. 22.

On cross-examination he further testifies:

"Q. I will ask you, Mr. Brown, whether or not you know of an instance where an employé took out these orders and afterwards presented them to your company himself on a regular pay-day to obtain the cash on them?

"A. No, sir; they have never been presented on pay-day.

"Q. Were any orders taken out by an employé ever presented on a regular pay-day and cash demanded on them that you know?

"A. No, sir.

"Q. If the orders were presented by an employé on a regular pay-day and the cash demanded, and the date of the order should show that it was for wages earned between the first of the month and the regular pay-day, would you pay the order in cash?

"A. No, sir."

Trans., p. 26.

The difference between the contract of the parties and the obligation sought to be imposed by the statute is thus that under the contract of the parties the order is redeemable in merchandise only, although the company is willing to redeem it in cash in the hands of the employé himself, if presented at the next pay-day *after* the expiration of the month

in which the wages accrued for which the order was issued, whereas under the statute it is made redeemable in cash, not only in the hands of the employé, but also of his assignee, and is furthermore made thus redeemable at the *first* regular pay-day, or at any time after thirty days.

Thus, if an order were issued on March 17th for the week's wages ending on that day, the company would decline to redeem it for cash, even in the hands of the employé, before the pay-day on April 20th, at which the cash wages would have been payable; but under the statute it would be redeemable in cash in the hands either of the employé or of an assignee on the first pay-day, namely, March 20th; so that in such case the statute would impose two additional obligations on the company in violation of the contract of the parties, (1) by requiring the redemption of the order in cash in the hands of an assignee as well as of the employé; and (2) by requiring it to be so redeemed one month in advance of the regular cash pay-day of the company. As a matter of fact, it would impose a third obligation not now in fact incurred by the company, though, as stated in its answer, it has no objection to it, namely, that of redeeming the order in cash in the hands of employé, no demand for such redemption being now in fact made.

As the matter now stands the issuance of the orders is a convenience to the employés which they voluntarily request and of which they now make no complaint. It is profitable to the company in increasing its sale of coal and enabling it to make a profit thereby, which unquestionably enables it to pay higher cash wages than it otherwise could, the profit on these coal orders being taken into consideration in fixing the cash rate of wages.

If the statute is held to be constitutional and enforceable its practical result will clearly be as follows:

In the first instance, the market price of coal orders will be increased to par, as they will be at once redeemable in cash at par, and a temporary increase of wages will be

brought about. In the second place, as the demand for their redemption will then, of course, be made in cash rather than in merchandise, almost all wages will be drawn in orders in order to get the earlier cash payments, and the company will be made to pay the large bulk, if not all, of its wages, not only in cash, but often a month earlier than they are now paid. There will then be an increased expense to the company and a positive loss resulting from the earlier payment of wages, with no corresponding benefit in profit on the orders, as at present. It is difficult to see how the company will then escape the necessity of discontinuing the issuance of the coal orders and going back to the system of a monthly cash pay-day.

This would have two results. In the first place, it would deprive the employés of the convenience arising from the anticipation of wages and would work great hardship to the families of the improvident. In the second place, as the company would lose the profit arising from orders which are taken into consideration in fixing the scale of wages, it would of necessity cause a readjustment in the scale of wages and a lowering of the cash rate, as the company, in the face of competition of other coal-fields and iron markets, could not do business successfully at a higher rate of wages; and so in the end the operation of economic laws and of the laws of demand and supply, which neither employer nor employé is able to withstand, would restore approximately the present status, and the *aggregate* wages be fixed again at the same rate as at present, with nothing accomplished after all, except that the laborer will be deprived of the convenience of anticipating his wages and a permanent blow will have been struck at the liberty of the individual and further encouragement given to the false hope that mere legislation is the sovereign panacea for social evils and economic troubles.

If such legislation is proper and constitutional, it is difficult to see where the line of demarcation shall be drawn,

where the halt shall be made, what private right shall be sacred from legislative interference.

While it is not denied that whenever the public welfare requires it, yet we respectfully submit that the public necessity should be imperative, the demand overruling, which should justify legislation making such serious inroads upon the liberty of the citizen, "the most essential personal right to human happiness," and going so far to foster in our people a spirit of dependence, rather than of independence, a habit of looking to politicians for relief, rather than to individual effort, and contravening that spirit of individual liberty which has been the life of the Common Law "from the Year Books down."

We again quote from Mr. Judson's address:

"As shown by Sir Henry Maine, in his 'Ancient Law' and other works, freedom of contract is unknown to primitive societies, but it is at once an incident and an evidence of a relatively highly advanced civilization. The progress from the old system of rights and duties dependent on a fixed status to a system of rights and duties arising from the free contract of the individual is a distinct social advance from one great landmark of jurisprudence to another. In a modern industrial state this freedom of industrial contract representing a long and toilsome progressive social development becomes essential in any rational conception of individual liberty."

Again:

"The vice of the so-called social legislation denying freedom of contract is that it deprives the individual of his 'personal rights' and subjects him to the only tyranny which, in this democratic age, is possible."

Is not the greatest danger of legislation of this character that it tends to a retrogression from a system of rights depending on contract to a system of rights depending on status?

If the individual be once deprived of his personal rights on the theory that it is for his own good, when once accustomed to legislative dependence, may the same power not deprive him of liberty altogether?

C. E. LUCKY,
EDWARD T. SANFORD,
J. A. FOWLER,
Solicitors for Plaintiff in Error.

Supplemental Note.

At the request of solicitors for the Dayton Coal and Iron Co., the attention of the court is called to the following testimony in the record in their case, being the testimony in reference to the non-redemption in cash of the store orders involved in that case.

The only witness on this point is the company's cashier, G. C. McKENZIE, who testified as follows on direct examination:

"Q. 11. I believe that you say that these orders are issued by the defendant against the time of the operatives and during the month before they receive their pay.

"A. Yes, sir.

"Q. 12. And you say that a debit is made against the account of the man to whom these orders are issued when they are issued to him?

"A. Yes, sir; a debit to his account of the amount issued.

"Q. 13. He is charged up with it as though it had been a direct liquidation of that much of their indebtedness to him?

"A. Yes, sir."

Trans., p. 12.

Again, on cross-examination, he testified as follows:

"Q. 29. Are these punch-outs ever redeemed in money in the hands of the payee or anybody else?

"A. No, sir."

Trans., p. 18.

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Brf. of Green for D. C.

Office Supreme Court U.S.
FILED
JAN 28 1901
JAMES H. MCKENNEY,
Clerk.

Supreme Court of the United States.

Filed Jan. 28, 1901.

OCTOBER TERM, 1900.

THE KNOXVILLE IRON COMPANY, Plaintiff in Error,

vs.

SAMUEL HARBISON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

BRIEF FOR DEFENDANT IN ERROR.

JOHN W. GREEN,
SOLICITOR FOR DEFENDANT IN ERROR.

SAMUEL G. SHIELDS,
OF COUNSEL.

S. B. NEWMAN & CO., PRINTERS AND BINDERS, KNOXVILLE.

SUPREME COURT OF THE UNITED STATES.

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vs.

SAMUEL HARBISON, Defendent in Error.

Brief for Defendant in Error.

THE ISSUE.

This case draws in question the constitutionality of Chapter 11 of the Acts of 1899, of the General Assembly of the State of Tennessee, which provides that all persons, firms, corporations and companies using coupons, scrip, punchouts, store orders or other evidences of indebtedness to pay laborers, shall, if demanded, redeem the same in good and lawful money of the United States.

The plaintiff in error claims that this Statute takes away or is a limitation upon the right of contract and is obnoxious to Section 1 of the 14th amendment of the Constitution of the United States which declares that "no state shall make or enforce any law "which shall abridge the privileges and immunities of citizens of "the United States; nor shall any State deprive any person of "life, liberty or property without due process of law."

THE FACTS.

It is unnecessary to quote the Statute as it is set out in full in the brief filed for plaintiff in error, and the only additional facts that need be referred to are these:

The Knoxville Iron Company, plaintiff in error, is a corporation chartered by special Statute of the General Assembly of the State of Tennessee, Chapter 57, of the Acts of 1867-'68, with power to purchase, hold and dispose of real estate, iron, coal, etc., and to mine, sell and manufacture the same. Its principal office

is in Knoxville, Tenn., where it is engaged in the manufacture of iron. It also, as an adjunct to its principal business, mines and sells coal. Its mines are located in Anderson County, Tenn. It works about two hundred employees. Its regular pay day is on the Saturday of each month which falls nearest to the 20th day of the month. Upon this pay day each employee is paid in cash the amount due him to the first day of the month, but the Company always keeps the wages of the employees in arrears for the period of time between the first of the month and the pay day. It does not and will not pay cash to its employees for wages at any other time except on its regular pay days, but on every Saturday in the month, the Company offers to pay its employees the full amount due them if they will accept it in coal orders at twelve cents per bushel, and the afternoon of every Saturday is set apart for that purpose.

The plaintiff in error with these coal orders pays off about seventy-five per cent of the wages earned by its employees. Many of the employees who draw these orders get wages ranging from 90 cents to $1.20 per day and they sell the orders to get money to live on. The Company makes some profit in accepting said orders, and to some extent its coal business is increased thereby. Unless the employees take their wages in coal orders, they are compelled to submit to having said wages continually in arrears for about twenty days, that is from the first of the month to the regular pay day, about the 20th of the month.

The defendant in error, the *bona fide* holder by purchase of six hundred and fourteen of said accepted orders from said employees, demanded payment thereof from plaintiff in error within the time prescribed by the Statute, and upon payment being refused brought this suit. The Supreme Court of Tennessee, affirming the lower Courts, decreed against the Company for the full value of said coal orders, from which decree this writ of error is prosecuted.

Rec. p. 66-67.

THE STATE MAY BY STATUTE LAWFULLY LIMIT THE RIGHT OF CONTRACT.

It is conceded that the right to make lawful contracts is entitled to the same protection and is as much safe-guarded by the Fourteenth Amendment of the Constitution as "property" and

"liberty," and that the prohibition in said Amendment against depriving any person of life, liberty or property without due process of law, embraces and applies to contracts. But there are many familiar instances of the unquestioned power of government to restrain citizens from making or enforcing contracts, such as: buying or selling lottery tickets; agreements to pay usurious interest; contracts of married women; contracts of minors; contracts, not in writing, within the Statute of frauds; contracts for compensation exceeding $10.00 to pension attorneys; contracts releasing common carrier from his own negligence, and numerous others.

The presumption is always in favor of the validity of a statute if the contrary is not clearly demonstrated, and a statute is not to be pronounced void upon the ground of repugnancy to the Constitution, unless such repugnancy be clear and the conclusion that it exists inevitable.

Cooper vs. Telfair, 4 Dall. 14.
Fletcher vs. Polk, 6 Cranch, 87.
Pine Grove vs. Talcott, 19 Wall. 666.

Where a contract of insurance provided that the insurance company should not be liable beyond the actual cash value of the property at the time of its loss, and where a Statute of Missouri provided that in all suits brought upon policies of insurance against loss or damage by fire, the insurance company should not be permitted to deny that the property insured was worth at the time of issuing the policy the full amount of the insurance, this Court held that it was competent for the legislature of Missouri to pass such a law even though it does place a limitation upon the right of contract. The language of the Court upon this point is as follows:

"It would be idle and trite to say that no right is absolute. "*Sic utere tuo ut alienum non laedas* is a universal and pervading "obligation. It is a condition upon which all property is held. "Its application to particular conditions must necessarily be within "the reasonable discretion of the legislative power. When such "discretion is exercised in a given case by means appropriate and "which are reasonable, not oppressive or discriminatory, it is not "subject to constitutional objection."

Orient Insurance Co. vs. Daggs, 172 U. S. 557.

To the same effect is the holding of the Supreme Court of Tennessee, where the three-fourth clause in a policy of insurance was held invalid, and an act of the legislature providing that all such stipulations in policies are void, and requiring the insurer to pay the full value of the property destroyed, not exceeding the amount expressed in the policy, was held to be valid.

Dugger vs. Insurance Co., 95 Tenn., 250.

Where the legislature of Utah passed an act regulating the employment of workingmen in underground mines and smelters, and fixing the period of employment at eight hours per day, this Court held that said act was a valid exercise of the police power of the State and not in contravention of the Fourteenth Amendment. The same objection was urged in the case just quoted as in the case at bar, viz., that the act limited the right of contract. But the Court held that the fact that "both parties are of full "age and competent to contract does not necessarily deprive the "State of the power to interfere where the parties do not stand "upon an equality, or where the public health demands that one "party to the contract shall be protected against himself."

Holden vs. Hardy, 169 U. S., p. 366-397.

An act by the Legislature of Arkansas provided that whenever any corporation or person engaged in operating or constructing a railroad, shall discharge with or without cause any employee or servant, the unpaid wages of any such servant or employee then earned shall become due and payable on the date of such discharge without abatement or deduction. This Court construing said statute said "the right of contract is not absolute, but may be "subjected to the restraints demanded by the safety and welfare of "the state," and that this legislation was not an infraction of the "Fourteenth Amendment.

St. Louis Ry. vs. Paul, 173, U. S. 404.

A contract providing that a party shall not remove a cause to the Federal Court is void.

Home Ins. Co. vs. Morse, 20 Wall., 455.
Doyle vs. Continental Ins. Co., 90 U. S. 535.

Apply the principles and reasoning of the cases just cited to the facts of the case at bar. The Court of Chancery Appeals,

whose findings of fact under the Statute of Tennessee, creating said tribunal, are made conclusive and final, (see Acts of Tennessee, 1895, Ch. 76.) find, that *the employees of plaintiff in error are "systematically in the main settled with in coal orders instead "of cash, and where, though there is no compulsion in form, yet "in fact by holding back their wages, such a motive power is "brought to bear upon their freedom of choice as to practically "amount to coercion. * * * We think the facts found show a "species of compulsion where the defendant (plaintiff in error) "takes advantage of the necessities or of the improvidence of its "employees and so places them in a position where they feel com-"pelled to take their wages in coal orders."*

Rec. p. 89.

Is it not clear from this statement of fact that the plaintiff in error and its employees do not "stand upon an equality?" In the case of Holden vs. Hardy, *supra*, the Court declares that the legislature may interfere where the employer and employee do not "stand upon an equality."

In the case of Orient Ins. Co. vs. Daggs, *supra*, it is held that the legislature is vested with large discretion to be exercised in such matters in a reasonable way without oppression or discrimination. The facts above quoted show that *the plaintiff in error "takes advantage of the necessities or improvidence of its "employees and so places them in a position where they feel com-"pelled to take their wages in coal orders."* Can there be any "oppression" or "discrimination" on the part of the legislature in preventing the employer from taking advantage of the necessities and improvidence of its employees and in protecting the weak against the strong, by requiring payment of laborers wages in money instead of coal orders?

The Statute under consideration does not prohibit plaintiff in error from issuing coal orders or from paying its employees in merchandise. It may continue to do this the same as before, but the employee or *bona fide* holder has the option of requiring the redemption of such coal orders in money if presented for payment on a regular pay day or at any time within thirty days from their issuance. The Statute is in no sense prohibitory, it is merely regulative.

Plaintiff in error promised its employees when their services

were engaged to pay them a certain stipulated price in money for their labor. The Statute does not require the payment of a single penny in excess of the contract of employment, nor the payment in any other mode or medium than that fixed by the contract. The Statute simply regulates the method of payment; it does not shorten the time between pay days; it does not increase the amount of the wages; it does not make a contract between employer and employee; it simply requires the employer when it is demanded to pay the wages of the laborer in money according to the original contract.

THE STATUTE COMPLIES WITH THE DUE PROCESS OF LAW CLAUSE OF THE CONSTITUTION.

Law in its regular course of administration through Courts of justice is due process, and when secured by the law of the State, the Constitutional requirement is satisfied.

Leeper vs. Texas, 139 U. S., 462.

The act in question does not violate the "due process" clause of the Constitution. This clause is complied with where the person condemned has had sufficient notice and adequate opportunity to defend.

L. & N. R. R. vs. Schmitt, 177 U. S., 230.

In the case of Holden vs. Hardy, *supra*, it is stated that "this "court never attempted to define with precision the words 'due "process of law' * * * it is sufficient to say that no man shall "be condemned in his person or property without due notice and "an opportunity of being heard in his defense."

See also Slaughter House Cases, 16 Wall., 127.
Davidson vs. New Orleans, 96 U. S., 104.

THE STATUTE IS A LEGITIMATE EXERCISE OF THE POLICE POWER.

The act in question is a proper exercise of the police power of the State.

"The power of the State to provide for the general welfare "of its people authorizes it to prescribe all such regulations as "in its judgment will secure or tend to secure them against the "consequence of ignorance and incapacity as well as deception

"and fraud." This was said with respect to the power of the State to require a certificate to be issued by the Board of Health to each practitioner of medicine as a prerequisite to his practising his profession.

Dent vs. West Va., 129 U. S., 114.

The police power is not subject to any definite limitations, but is co-extensive with the necessities of the case and the safeguard of the public interests.

Camfield vs. United States, 167 U. S., 18.

Where the police power is invoked in good faith for the prohibition of a practice which the legislature has declared to be detrimental to the public interests, it will be sustained wherever it can be done without the impairment of vested rights. * * * Whatever is contrary to public policy or inimical to the public interests is subject to the police power of the State and within legislative control and in the exertion of such power, the legislature is vested with a large discretion, which, if exercised, *bona fide* for the protection of the public, is beyond the reach of judicial inquiry.

L. & N. R. R. vs. Kentucky, 161 U. S., 700.

A Massachusetts Statute prohibiting the erection of a fence unnecessarily exceeding six feet in height, maliciously maintained for the purpose of annoying the adjoining owner or occupant, is within the limits of the police power and is Constitutional, although not directly injurious to the public at large, because it was to the public interest to restrain this kind of annoyance by one neighbor of another.

Rideout vs. Knox, 148 Mass., 368.

An ordinance of San Francisco prohibiting the washing and ironing of clothes in public laundries and washhouses within certain prescribed limits between ten o'clock at night and six o'clock the following morning is within the police powers. In this case the court uses the following language: "The 14th Amendment "was not designed to interfere with the power of the State some- "times termed its police power to prescribe regulations to promote

"the health, peace, morals, education, and good order of the people "and to legislate so as to increase the industries of the state, de- "velop its resources and add to its wealth and prosperity."

Barbier vs. Connally, 113 U. S., 27.

A statute of New York providing that fishing nets in certain waters may be summarily destroyed by any person is a lawful exercise of the police powers. The State may interfere wherever the public interest demands it and in this particular, a large discretion is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests.

Lawton vs. Steele, 152 U. S., 133.

An ordinance prohibiting any person from making any public address on any public ground, without the permit of the mayor is within the police powers.

Davis vs. Massachusetts, 167 U. S , 43.

The State can not so tie its hands that it may not revoke at its discretion lottery privileges and lotteries.

Douglass vs. Kentucky, 168 U. S., 488.

A Statute of Louisiana requiring dogs to be placed upon the assessment rolls and limiting any recovery by the owner to the value fixed by himself for the purpose of taxation, is within the police power.

Sentell vs. New Orleans, 166 U. S., 698.

In the case of Munn vs. Illinois, *post*, this Court cites approvingly a decision of the Supreme Court of Alabama upholding the legality of a Statute of that State authorizing the City of Mobile to regulate the weight and price of bread, and declaring that it did not interfere with the right of the citizen to pursue his lawful trade or calling in the mode his judgment might dictate.

Mobile vs. Yuille, 3 Ala., 140.

The foregoing citations apply solely to the rights of private citizens with respect to their private affairs. The principle is also illustrated by the large class of cases involving the police power of the State over *quasi* public corporations, such as rail-

roads, elevators, water companies, telegraph and telephone companies, etc.

Budd vs. New York, 143 U. S., 517.
Spring Valley Water Works vs. Schottler, 110 U. S., 347.
Chicago, etc., R. R. vs. Nebraska, 170 U. S., 57.
Slaughterhouse Cases, 16 Wall., 36.
Dow vs. Beidelman, 125 U. S., 680.
Munn vs. Illinois, 94 U. S., 113.

WAGES DUE TO THE LABORER ARE OFTEN AND IN MANY WAYS MADE THE SUBJECT OF LEGISLATIVE PROTECTION, AND SUCH STATUTES SO FAR FROM BEING CONSIDERED PATERNAL AND AS FINANCIAL MEASURES, AS IS ARGUED FOR PLAINTIFF IN ERROR, ARE UPHELD BY THE COURTS AS JUST MEANS FOR THE PROTECTION OF THE WEAK AGAINST THE STRONG.

Seamen's wages are regulated by Statute of the United States

U. S. Rev. Statutes, Sec. 4520.

Seamen are protected against new or unusual stipulations in the shipping articles, or against stipulations contravening the language and policy of the Statute.

25 Fed. Rep., 285.
27 Fed. Rep., 567.

In nearly all the States of the Union, stockholders in many classes of corporations are made individually liable for debts incurred for labor.

In many of the States of the Union, the wages of the laborer are exempt either in whole or in part from execution or attachment.

In perhaps all the States of the Union, the laborer, who is a mechanic, is given a prior lien upon the work done or materials furnished for the amount due him.

In many States the laborer is given a prior lien upon the assets of an insolvent firm or corporation for wages in arrears at the date of such insolvency.

The Bankrupt act passed by Congress in 1898 in Section 64 thereof expressly provides that "wages due workmen, clerks or

"servants, which have been earned within three months before "the date of the commencement of proceedings, not to exceed "three hundred dollars to each claimant," shall have priority.

So that it is no new thing for law making bodies to protect labor, and the Statute in question instead of being a departure from the beaten track is simply in line with the spirit of all legislation touching the laboring classes, who comprise so large an element of the population of our country. As stated in the opinion of the Court of Chancery Appeals in this case, *"as a rule they "are a dependent class, and more than any other need the protect- "ing power of the law. Their situation is such, and their habits "of life such, that they can not do a great deal in the way of self "protection in the matter of making contracts."*

It is true that in each of the instances cited "a financial benefit," against which plaintiff in error so strongly inveighs, is conferred upon the laborer, yet the legislation is not for that reason to be set aside and declared unconstitutional. These enactments, like the Statute involved in this suit, are justified because it is the duty of the State to afford protection to the weak, to the ignorant and to the improvident, and to guard its citizens against fraud and deception and to put employee and employer upon an equality.

It is improper for plaintiff in error to assume that *health, morals and safety* are alone concerned in the exercise of the police power.

As was said by this Court in the case of Dent vs. West Virginia, *supra*, the police power may be properly exercised for the protection of citizens against *ignorance, incapacity, deception and fraud.*

As was said in the case of Barbier vs. Connally, *supra*, the police power may not only be exercised for the protection of *health, morals* and *peace* but for *education, good order*, to *increase the industries of the State, develop its resources and add to its wealth and prosperity.*.

As was said in the case of Camfield vs. United States, *supra*, *the police power is not subject to any definite limitations but is co-extensive with the necessities of the case.*

As was said in the case of Holden vs. Hardy, *supra*, the

State may interfere where *the parties do not stand upon an equality.*

Statutes like the one in question are founded upon reasons similar to those which justify the passage of usury laws, concerning which the Supreme Court of Illinois declares, they "proceed upon the theory that the lender and borrower of money "do not occupy towards each other the same relations of equality "that parties do in contracting with each other in regard to the "loan or sale of other kinds of property, and that the borrower's "necessities deprive him of freedom in contracting and place him "at the mercy of the lender."

Frorer vs. People, 141, 111, 171.

SIMILAR LEGISLATION IN OTHER STATES HELD CONSTITUTIONAL.

A Statute of Massachusetts requiring manufacturers to pay the wages of their employees weekly was upheld by the Supreme Judicial Court of that State.

House Bill No. 1230, 163 Mass., 587.

The validity of a Statute requiring the wages of employees engaged in mining or manufacturing to be paid at least once every two weeks by all persons, firms, corporations, etc., engaged in such business was sustained in Indiana.

Hancock vs. Yaden, 121 Ind., 366.

In West Virginia, a Statute prohibiting any corporation, company, firm or person engaged in any trade or business from paying employees in any scrip, token, draft, check or otherwise than lawful money was held constitutional.

Peel Spli t Co. vs. State, 36 W. Va., 802.

In Kentucky, which has a constitutional provision on the subject, it is held that if the periods fixed for the payment of the laborers wages are so unreasonable as that his necessities force him to apply for and accept pay in checks for merchandise, the Statute of the State providing that wage earners shall be paid in lawful money, would be violated, notwithstanding the laborer consented to take the checks.

Avent-Beattyville Coal Co. vs. Commonwealth, Ky., p. 28 L. R. A., 273.

In Rhode Island a Statute requiring corporations to pay their employees weekly the wages earned by them to within nine days of the date of such payment, was sustained mainly on the ground of the reserved right in the Legislature to amend charters of corporations, but the Court in argument asserts that it is a proper exercise of the legislative power for the protection of the weak.

State vs. Brown Company, 18 R. I., p. 17 L. R. A., 856.

In Maryland an Act prohibiting the payment of employees of certain corporations otherwise than in legal tender money of the United States was upheld as being within the reserved right of the legislature to amend charters.

Shaffer vs. Union Mining Co., 55 Md., 74.

THE STATEMENT IN THE BRIEF FILED FOR PLAINTIFF IN ERROR TO THE EFFECT THAT THE OVERWHELMING WEIGHT OF AUTHORITY, IS OPPOSED TO THE CONSTITUTIONALITY OF STATUTES SIMILAR TO THE ONE IN QUESTION IS NOT SUPPORTED BY THE FACTS.

One of the cases cited by plaintiff in error in support of this position is the State vs. Loomis, where the Supreme Court of Missouri declared unconstitutional an act prohibiting "mining and manufacturing concerns" from paying wages otherwise than in lawful money of the United States. But this conclusion was based upon the want of "due process of law," and upon unconstitutional discrimination between employees, and is therefore not analogous.

Another case thus relied on by plaintiff in error, is the State vs. Goodwill from West Virginia, where a Statute prohibiting "persons engaged in mining and manufacturing" from paying labor in any kind of paper not redeemable in lawful money within thirty days, was declared unconstitutional. This, as in the case from Missouri, was also declared unconstitutional because discriminatory, and is therefore not authority in the case at bar. Besides the same Court later in the case of Peel Splint Co. vs. State, 36 West Va., 802, *supra*, held a similar act, free from the discriminatory objection, constitutional.

The decision from Kansas in the case of State vs. Haun also relief on by plaintiff in error, where the Statute as to wages was held unconstitutional, is based partly upon the ground that it is

class legislation, and partly upon the ground that it is an unauthorized interference with the right of contract.

The Pennsylvania decision relied on by plaintiff in error, does squarely hold that an act of the Legislature of that State similar to the one in question is unconstitutional and void because it prevents persons who are *sui juris* from making contracts.

So it is, the decisions of the highest Courts of Massachusetts, West Virginia, Indiana, Kentucky, Tennessee, Rhode Island and Maryland, some upon one ground and some upon another, uphold the constitutionality of these Statutes, while the highest Courts of Missouri, Kansas and Pennsylvania, upon grounds equally variant, deny their constitutionality.

Among the many cases which plaintiff in error cites and relies on in its brief as analogous to the case at bar, it will be noted that the decisions of the Supreme Courts of Illinois, Nebraska, Colorado and California with reference to the eight hour law are directly opposed to the conclusion of this Court in the case of Holden vs. Hardy, *supra*.

It will also be noted that while the decisions of the Supreme Court of Illinois and Colorado declare certain coal screening statutes illegal, the Supreme Court of Illinois held in a later opinion that another similar statute was valid, and the Supreme Courts of West Virginia and Kansas have likewise sustained coal screening laws passed by the legislatures of those states.

It would perhaps be unprofitable to multiply citations along this line as each case in large measure depends upon its particular facts, and upon the peculiar wording of the Statutes drawn in question.

It is sufficient to say that in no case has a statute of this character come under consideration which is less stringent or more absolutely fair to both employer and employee than the one here drawn in question. In the language of the Supreme Court of Tennessee "it is neither prohibitory nor penal; not special but general; tending toward equality between employer and employee in the matter of wages; intended and well calculated to promote peace and good order and to prevent strife, violence and blood-shed."

It neither interferes with existing contracts nor does it contain a prohibition against future contracts. It is not in the least

degree oppressive to the employer because it imposes no burden upon him which he did not assume when he engaged the services of the employee. It is necessary to the welfare of the employee, because it enables him to obtain the full amount of his wages without being compelled to take payment thereof in coal, which he can not consume, or in coal orders which he can not convert into money except at a costly discount. It is a proper exercise of the police power and is valid legislation fully sustained by both reason and authority.

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SAMUEL G. SHIELDS,
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Supreme Court of the United States.

No. 22.—October Term, 1901.

The Knoxville Iron Company, Plaintiff in Error, vs. Samuel Harbison. } In error to the Supreme Court of the State of Tennessee.

[October 21, 1901.]

In the chancery court of Knox County, Tennessee, Samuel Harbison, a a citizen of said State, on June 2, 1899, filed a bill of complaint against the Knoxville Iron Company, a corporation organized under the laws of the State of Tennessee, alleging that he was the *bone fide* holder by purchase in due course of trade of certain specified accepted orders for coal that had been issued by the defendant company in payment of wages due to its employes; that he had made due demand for their redemption in cash according to law, which demand had been refused; and that he was entitled to a decree for the amount of said orders with interest. The company filed an answer, denying that the complainant was a *bona fide* holder of the orders in question, and alleging an agreement between the company and its employes that the latter would accept coal in payment of said orders, &c.

Proof was taken and the case heard by the chancellor, who rendered a decree in favor of the complainant for $1,702.66 as principal and interest of said orders with costs. An appeal was taken by the defendant company to the Court of Chancery Appeals of Tennessee, an intermediate court of reference in equity causes, where the decree of the chancery court of Knox County was affirmed.

The facts as found by the Court of Chancery Appeals are as follows:

"The defendant is a corporation chartered under chapter 57, Acts of 1867–'8. The following powers are given by section 4: 'To purchase, hold and dispose of such real estate, not to exceed seventy thousand acres, leases, minerals, iron, coal, oil, salt and personal property as they may desire, or as they may deem necessary for the legitimate transaction of their business; to mine, bore, forge, smelt, work and manufacture, transport, refine and vend the same. The company to have and enjoy, and exercise, all the rights, privileges and powers belonging to, or incidental to corporations, which may be convenient to carry out any business they are in this act authorized to engage in.'

"The defendant has its principal office at Knoxville, where it is engaged in the manufacture of iron. As an incident to this business, it also mines and sells coal. Its mines are located in Anderson County. It works about

two hundred employes. It has now and has had for many years a regular pay day, being that Saturday in every month which is nearest the 20th day of the month. Upon this pay day each employe is paid in cash the amount then due him, excepting what may be due him from the first of the month up to said pay day; that is, the company keeps in arrears with its employes all the time to the extent of their wages for about twenty days' time, so far as concerns the matter of cash payments, but they may collect this sum and all sums that may be due them in coal orders, as stated below. It does not and will not pay cash to its employes for wages at any other time than upon said regular pay days. Defendant, however, nearly always has on hand in its Knoxville yard a large amount of coal which it sells to all persons who are willing to purchase, whether such persons are its laborers or the public generally. For some time prior to the filing of the bill and at the time the bill was filed the defendant was and had been accustomed to accept from its laborers after work had been performed orders for coal in the following form:

'Let bearer have —— bushels of coal and charge to my account.

—— ——.'

"The defendant's employes are accustomed to sign orders, and in this form they are accepted by a stamp in these words:

'Accepted ——— 1899.

KNOXVILLE IRON COMPANY.'

"Many of the defendant's employes have never drawn an order on the defendant, and many others have used them only in the purchase of coal for themselves; but the defendant in this way pays off about seventy-five per cent of the wages earned by its employes. Many of the employes who draw these orders get small wages, ninety cents to one dollar and twenty cents per day, and sell these orders to get money to live on, but those who get the largest wages, $65 to $175 per month, draw more of such coal orders in proportion than do those who get small wages. Defendant has never insisted upon any of its laborers giving any such orders but has been willing to accept such orders when any employe would draw them and ask their acceptance. Defendant, however, sets apart every Saturday afternoon, from one o'clock to five o'clock, for the acceptance of such orders. It makes some profit in accepting said orders in that, instead of paying the wages of its employes in cash, it pays them in coal at 12 cents per bushel, and also, to some extent, its coal business is increased thereby. On the other hand, such orders are a convenience to the defendant's employes in the way of enabling them to realize on their wages before the regular monthly pay day and up to that pay day. When these orders are drawn by defendant's employes and accepted, defendant credits itself with said orders on its accounts with the persons so drawing them at the rate of twelve cents per bushel for the amount of coal called for by said orders. There is no proof of an express agreement between the defendant and its employes that the orders should be paid only in coal, unless the face of the order shall be construed as setting forth such an agreement. The only proof of any implied agreement to that effect is to be found in such inferences as may be drawn from the face of the orders and from the custom of the company to issue them and the employes to receive them on other than the regular cash

pay days and the fact that no employe has ever presented one of such orders for redemption in anything else than coal. There is no proof of any compulsion on the part of the defendant upon its operatives, except in so far as compulsion may be implied from the fact that unless defendant's operatives take their wages in coal orders they must always on each monthly pay day suffer the defendant to be in arrears about twenty days—that is, that on the regular pay day on that Saturday which is the nearest the 20th of the month the defendant will not pay wages, except up to the last day of the preceding month, but will pay in coal orders the whole wages due at the end of each week, and that such is the course of business between the defendant and its employes. The complainant purchased six hundred and fourteen of said accepted orders from defendant's employes, and within thirty days from the issuance of each of said orders he presented each of them to the Knoxville Iron Company, defendant hereto, and demanded that it redeem them in cash, which was refused by defendant. Complainant is a licensed dealer in securities and sent his agents among the employes of the defendant to buy these coal orders. They had previously been selling at seventy-five cents on the dollar—that is, before the passage of chapter 11, Acts of 1899—but he instructed his agents to give eighty-five cents on the dollar, and the orders now in suit were purchased at that price. They amount in dollars and cents to $1,678.00. There is no evidence of bad faith on the part of the complainant in the purchase of said orders."

The orders sued on in this case were issued after the passage of the act of March 17, 1899.

From the decree of the Chancery Court of Appeals an appeal was taken by the company to the Supreme Court of Tennessee, by which court the decrees of the courts below were affirmed. The case was then brought to this court by a writ of error allowed by the Chief Justice of the Supreme Court of Tennessee.

Mr. Justice SHIRAS delivered the opinion of the Court.

This is a suit in equity brought to this court by a writ of error to the Supreme Court of the State of Tennessee, involving the validity, under the Federal Constitution, of an act of the legislature of Tennessee, passed March 17, 1899, requiring the redemption in cash of store orders or other evidences of indebtedness issued by employers in payment of wages due to employes.

The caption and material portions of this act are as follows:

"AN ACT requiring all persons, firms, corporations and companies using coupons, scrip, punchouts, store orders or other evidences of indebtedness to pay laborers and employes for labor, or otherwise to redeem the same in good and lawful money of the United States in the hands of their employes, laborers or a *bona fide* holder, and to provide a legal remedy for collection of same in favor of said laborers, employes and such *bona fide* holder.

"SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations and companies, using coupons,

scrip, punchouts, store orders or other evidences of indebtedness to pay their or its laborers and employes, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employe or *bona fide* holder, in lawful money of the United States: *Provided*, The same is presented and redemption demanded of such person, firm, company or corporation using same as aforesaid, at a regular pay day of such person, firm, company or corporation to laborers or employes, or if presented and redemption demanded as aforesaid by such laborers, employes or *bona fide* holders at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order or other evidence of indebtedness to such employes, laborers or *bona fide* holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness: *Provided, further*, Said face value shall be in cash the same as its purchasing power in goods, wares and merchandise at the commissary, company store or other repository of such company, firm, person or corporation aforesaid.

"SEC. 2. Be it further enacted, That any employe, laborer or *bona fide* holder referred to in section 1 of this act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in section 1 of this act."

The views of the Supreme Court of Tennessee, sustaining the validity of the enactment in question, sufficiently appear in the following extracts from its opinion, a copy of which is found in the record:

"Confessedly, the enactment now called in question is in all respects a valid statute and free from objection as such, except that it is challenged as an arbitrary interference with the right of contract, on account of which it is said that it is unconstitutional and not the 'law of the land' or 'due process of law.'

"The act does, undoubtedly, abridge or qualify the right of contract, in that it requires that certain obligations payable in the first instance in merchandise shall in certain contingencies be paid in money, yet it is as certainly general in its terms, embracing equally every employer and employe who is or may be in like situation and circumstances, and it is enforcible in the usual modes established in the administration of governments with respect to kindred matters. The exact and precise requirement is that all employers, whether natural or artificial persons, paying their employes in 'coupons, scrip, punchouts, store orders, or other evidences of indebtedness' shall redeem the same at face value in money, if demanded by the employe or a *bona fide* holder on a regular pay day or at any time not less than thirty days from issuance (sec. 1), and that if payment be not so made upon such demand, the owner may maintain a suit on such evidence of indebtedness and have a money recovery for the face value thereof in any court of competent jurisdiction (sec. 2).

"There is no prohibition against the issuance of any of the obligations referred to, nor against payment in merchandise or otherwise according to their terms, but only a provision that they shall be paid in money at the election and upon a prescribed demand of the owner. In other words, the effect of the act is to convert into cash obligations such unpaid merchandise orders, &c., as may be presented for money payment on a regular pay day or as much as thirty days after issuance.

"Under the act the present defendant may issue weekly orders for coal, as formerly, and may pay them in that commodity when desired by the holder, but instead of being able, as formerly, to compel the holder to accept payment of such orders in coal, the holder may, under the act, compel defendant to pay them in money. In this way and to this extent the defendant's right of contract is affected.

"Under the act, as formerly, every employe of the defendant may receive the whole or a part of his wages in coal orders, and may collect the orders in coal or transfer them to some one else for other merchandise or for money. His condition is bettered by the act, in that it naturally enables him to get a better price for his coal orders than formerly, and thereby gives him more for his labor; and yet, although the defendant may not in that transaction realize the expected profit on the amount of coal called for in the orders, it in no event pays more in dollars and cents for the labor than the contract price.

"The scope and purpose of the act are thus indicated. The legislature evidently deemed the laborer at some disadvantage under existing laws and customs, and by this act undertook to ameliorate his condition in some measure by enabling him or his *bona fide* transferee, at his election and at a proper time, to demand and receive his unpaid wages in money rather than in something less valuable. Its tendency, though slight it may be, is to place the employer and employe upon equal ground in the matter of wages, and, so far as calculated to accomplish that end, it deserves commendation. Being general in its operation and enforcible by ordinary suit, and being unimpeached and unimpeachable upon other constitutional grounds, the act is entitled to full recognition as the 'law of the land' and 'due process of law' as to the matters embraced, without reference to the State's police power, as was held of an act imposing far greater restrictions upon the right of contract, in the case of *Dugger* v. *Insurance Company*, (95 Tenn. 245,) and as had been previously decided in respect of other limiting statutes therein mentioned. (Ib. 253, 254.)

"Furthermore, the passage of the act was a legitimate exercise of police power, and upon that ground also the legislation is well sustained. The first right of a State, as of a man, is self-protection, and with the State that right involves the universally acknowledged power and duty to enact and enforce all such laws not in plain conflict with some provision of the State or Federal Constitution as may rightly be deemed necessary or expedient for the safety, health, morals, comfort and welfare of its people.

"The act before us is, perhaps, less stringent than any one considered in any of the cases mentioned. It is neither prohibitory nor penal; not special, but general; tending towards equality between employer and employe in the matter of wages; intended and well calculated to promote peace and good order, and to prevent strife, violence and bloodshed. Such being the character, purpose and tendency of the act, we have no hesita-

tion in holding that it is valid, both as general legislation, without reference to the State's reserved police power, and also as a wholesom gulation adopted in the proper exercise of that power."

The Supreme Court of Tennessee justified its conclusions by so full and satisfactory a reference to the decisions of this court as to render it unnecessary for us to travel over the same ground. It will be sufficient to briefly notice two or three of the latest cases.

In *Holden* v. *Hardy*, (169 U. S. 366,) the validity of an act of the State of Utah, regulating the employment of workingmen in underground mines and fixing the period of employment at eight hours per day, was in question. There, as here, it was contended that the legislation deprived the employers and employes of the right to make contracts in a lawful way and for lawful purposes; that it was class legislation, and not equal or uniform in its provisions; that it deprived the parties of the equal protection of the laws; abridged the privileges and immunities of the defendant as a citizen of the United States, and deprived him of his property and liberty without due process of law. But it was held, after full review of the previous cases, that the act in question was a valid exercise of the police power of the State, and the judgment of the Supreme Court of Utah, sustaining the legislation, was affirmed.

Where a contract of insurance provided that the insurance company should not be liable beyond the actual cash value of the property at the time of its loss, and where a statute of the State of Missouri provided that in all suits brought upon policies of insurance against loss or damage by fire, the insurance company should not be permitted to deny that the property insured was worth at the time of issuing the policy the full amount of the insurance, this court held that it was competent for the legislature of Missouri to pass such a law even though it places a limitation upon the right of contract. (*Orient Insurance Co.* v. *Daggs*, 172 U. S. 557.)

In *St. Louis Iron Mountain Railway* v. *Paul*, (173 U. S. 404,) a judgment of the Supreme Court of Arkansas, sustaining the validity of an act of the legislature of that State which provided that whenever any corporation or person engaged in operating a railroad should discharge, with or without cause, any employe or servant, the unpaid wages of any such servant then earned should become due and payable on the date of such discharge without abatement or deduction, was affirmed. It is true that stress was laid in the opinion in that case on the fact that, in the constitution of the State, the power to amend corporation charters was reserved to the State, and it is asserted that no such power exists in the present case. But it is also true that, inasmuch as the right to contract is not absolute in respect to every matter, but may be subjected to the

restraints demanded by the safety and welfare of the State and its inhabitants, the police power of the State may, within defined limitations, extend over corporations outside of and regardless of the power to amend charters. (*Atchison, Topeka & Santa Fé Ry.* v. *Matthews*, 174 U. S. 96.)

The judgment of the Supreme Court of Tennessee is

Affirmed.

Mr. Justice BREWER and Mr. Justice PECKHAM dissent.

True copy.

Test:

Clerk Supreme Court, U. S.